

1 A P P E A R A N C E S:

2 PORZIO, BROMBERG & NEWMAN

3 163 Madison Avenue

4 CN 097

5 Morristown, New Jersey 07960

6 BY: MARC Z. EDELL, ESQ.

7 For the Plaintiffs

8

9 GREENBAUM, GREENBAUM, ROWE, SMITH,

10 BERGSTEIN, YOHALEM & BRUCK

11 Engelhard Building

12 P.O. Box 5600

13 33 Wood Avenue South

14 Woodbridge, New Jersey 07095

15 BY: ALAN S. NAAR, ESQ.

16 For Liggett Group, Inc.

17

18 SHOOK, HARDY & BACON

19 20th Floor

20 Mercantile Bank Tower

21 1101 Walnut

22 Kansas City, Missouri 64106

23 BY: ROBERT E. NORTHRIP, ESQ.

24 For Philip Morris, Inc.

25

1 A P P E A R A N C E S : (Continued)

2

3 BROWN, CONNERY, KULP, WILLE,

4 PURNELL & GREENE

5 Parkade Building

6 518 Market Street

7 P.O. Box 1449

8 Camden, New Jersey 08101

9 BY: JOHN MULDERIG, ESQ.

10 For Philip Morris, Inc.

11

12 SILLS, BECK, CUMMIS, ZUCKERMAN,

13 RADIN & TISCHMAN, P.A.

14 33 Washington Street

15 Newark, New Jersey 07102-3179

16 BY: BARRY L. SHAPIRO, ESQ.

17 For Loews Theatres, Inc.

18

19 ALSO PRESENT:

20 MICHELE BROWN

21 JAMES R. CHERRY, JR., ESQ.

22 ELIZABETH VILA

23

24

25

I N D E X1 WITNESS2 DIRECT

3 TOM H. MAU

4 Mr. Edell

5

6

7

8 E X H I B I T S

9	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFICATION</u>
10	Mau-1	True Advertisement	36
11	Mau-2	True Advertisement	43
12	Mau-3	True Advertisement	43
13	Mau-4	True Advertisement	88
14	Mau-5	True Advertisement	89
15	Mau-6	True Advertisement	89
16	Mau-7	True Advertisement	89

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1 T O M H. M A U,

2 [DELETED]

3

4 sworn.

5

6 DIRECT EXAMINATION

7 BY MR. EDELL:

8 Q. My name is Mark Edell. We introduced
9 ourselves before the deposition began. I'm an
10 attorney and I am sure that your attorneys have told
11 you that I represent the plaintiff in this case.

12 A. Yes.

13 Q. You're here today pursuant to deposition
14 notice to answer some questions which we believe to
15 be relevant to this litigation. If any of my
16 questions don't make sense, you don't understand
17 them, please tell me. I'll try to rephrase them.

18 If you don't know the answer to a
19 question, tell us that you don't know. If you don't
20 recall a fact which would be responsive to a
21 question, tell us that.

22 We're going to presume once you give an
23 answer you understood the question and you are
24 accurately responding to it. Do you understand that?

25 A. Yes.

1 Q. You are doing all right so far. All your
2 answers are audible. There is a tendency to nodding
3 heads. This gentleman to your right can't take down
4 nods of the head.

5 MR. SHAPIRO: Mr. Mau has a soft voice.

6 Q. If at any point your attorneys have an
7 objection to any question I pose, please hold your
8 answer until they've had a chance to place their
9 objection on the record at which time they will
10 indicate that you can or you should not answer the
11 question. Do you understand that?

12 A. Yes.

13 Q. If at any time you want to take at a
14 break, let me know, for any reason. Okay?

15 A. Okay.

16 Q. How old are you, sir?

17 A. 49.

18 Q. What's your date of birth?

19 A. December 2nd, 1934.

20 Q. Run through for us your educational
21 background, would you please.

22 A. I went to high school in Iowa, town called
23 Perry, Iowa. I went to the University of Iowa,
24 graduated with a BA and took --

25 Q. BA in what?

1 A. In journalism and took a couple of courses at
2 NYU Business School.

3 Q. Any particular subject?

4 A. No. Just general business.

5 Q. I'm sorry?

6 A. Just general business.

7 Q. Can you tell us about your work history?

8 A. Yes. I began in 1960 with McCann, Erickson
9 Advertising Agency, there about two years. I went
10 to American Sugar Company for something under four
11 years. I went to the Lennen & Newall Advertising
12 Agency and then went to another two advertising
13 agencies for a brief time and then to Lorillard.

14 Q. What are the other advertising agencies?

15 A. Doyle, Dane & Bernbach, and Ted Bates.

16 MR. EDELL: I have a question before we
17 go any further.

18 MR. SHAPIRO: Sure.

19 MR. EDELL: In reviewing again your
20 client's supplemental Answers to Interrogatories,
21 you've named a number of people as people with
22 knowledge of facts relevant to this litigation, one
23 of whom is Mr. Cherry.

24 Now, quite frankly, all of us lawyers
25 have knowledge of facts which are relevant to

1 litigation.

2 MR. SHAPIRO: Right.

3 Are we off the record or on?

4 MR. EDELL: Off the record.

5 (Discussion off the record.)

6 MR. SHAPIRO: Pursuant to Mr. Edell's
7 request, the attorneys named in answers to
8 interrogatory number 31, specifically Mr. James R.
9 Cherry, Mr. Ronald S. Goldbrenner and Mr. Arthur J.
10 Stevens are attorneys for Lorillard and the only
11 information that they would have would come pursuant
12 to their role as attorneys for the company and
13 advising the company in legal matters. None of them
14 would be anticipated to testify to anything at trial.

15 MR. EDELL: Okay. The reason I asked
16 that is because they were in attendance at various
17 organizational meetings and I don't want to be faced
18 with the proposition that they are going to come
19 forward at some juncture to testify at trial as to
20 what or what didn't happen at a certain type of
21 meeting.

22 MR. SHAPIRO: I think, no. They are
23 there. Whatever they would attend would be in their
24 capacity as attorneys for Lorillard.

25 MR. EDELL: Because if they were going to

1 be fact witnesses in this case, I would ask for the
2 same ruling with respect to their presence at
3 depositions as you've asked with the presence of
4 fact witnesses at depositions.

5 MR. SHAPIRO: Yes.

6 MR. EDELL: Okay?

7 MR. SHAPIRO: Sure enough.

8 MR. EDELL: Would you like to talk?

9 MR. NORTHRIP: Nothing to talk about at
10 this point except to say it doesn't need to be on
11 the record.

12 (Discussion off the record.)

13 Q. Since I have these answers out, might as
14 well go through some of the questions I had with
15 respect to those people named, see if you recognize
16 any of the names.

17 Who is Robert Berman?

18 A. He was with the DeGarmo Agency.

19 Q. Who is Mike Burke?

20 A. He works for Lorillard now.

21 Q. What capacity?

22 A. Group brand director.

23 Q. For what particular group?

24 A. He works on True and Kent.

25 Q. How long was he with the company?

1 A. Two-and-a-half years. He's still with the
2 company.

3 Q. Mr. Cotrone, Ronald Cotrone?

4 A. He worked for the company.

5 Q. When?

6 A. Let's see. I believe I can give you an
7 approximation. I guess 1970, late 1970. Maybe '71
8 to I think I'll say '74 or '75.

9 Q. He doesn't work with the company any more?

10 A. No.

11 Q. What did he do with the company?

12 A. He was assistant brand manager and then was a
13 brand manager.

14 Q. For True cigarettes?

15 A. I believe he was an assistant on True and then
16 became a brand manager on Kent.

17 Q. Michael Cox?

18 A. I don't recall the name.

19 Q. You ever work with anyone at 360 Madison
20 Avenue?

21 A. Have to define the building for me. I don't
22 recall the address.

23 Q. Let's see if we can get some of the other
24 people working at the building. William Rosenthal?

25 A. Mr. Rosenthal works for Darcy, McManus &

1 Massius.

2 Q. Who are they?

3 A. Mr. Rosenthal is, I'm not sure exact title, but
4 I'll say executive vice-president of the agency.

5 Q. Advertising agent?

6 A. Yes.

7 Q. Joel Spiegel?

8 A. I've heard the name, I can't place it.

9 Q. Mr. Rosenthal is located at 360 Madison
10 Avenue. Now can you picture the building?

11 A. Yes.

12 Q. Have you ever worked with any other
13 individual in that building?

14 A. Yes.

15 Q. Who were they employed by?

16 A. Well, it was DeGarmo, and DeGarmo merged with
17 Darcy at some point several years ago.

18 Q. So it would have to be somebody in that
19 agency?

20 A. That's correct.

21 Q. Richard Smith?

22 A. Yes.

23 Q. Who is Richard Smith?

24 A. Richard Smith worked for Lorillard.

25 Q. What capacity?

1 A. Last capacity was vice-president.

2 Q. Any particular areas?

3 A. New products.

4 Q. Do you know what, if any, contact he had
5 with True cigarettes?

6 A. He worked on True for a period of time in the
7 mid-70s.

8 Q. No longer with the company?

9 A. That's correct.

10 Q. Do you know if he's employed by anybody?

11 A. The last that I'd heard he was with
12 International Paper.

13 Q. Where are they located, do you know?

14 A. New York City.

15 Q. Larry Skladanowski, how is that?

16 A. Still doesn't help. I don't recall the name.

17 MR. SHAPIRO: Is he at that address?

18 MR. EDELL: No.

19 Q. What's your home address?

20 A. [DELETED]

21 Q. What is Osyssey Partners?

22 A. I don't know.

23 Q. You don't know Lester Pollack?

24 A. I've heard of Lester Pollack.

25 Q. What capacity?

1 A. I believe Lester was -- he was with Lowe's
2 Corporation.

3 Q. Board of directors?

4 A. Yes.

5 Q. You never heard of Osyssey Partners
6 though?

7 A. No.

8 Q. You obviously don't know what they do
9 then?

10 A. No.

11 Q. When you were at McCann, Erickson, what
12 did you do?

13 A. It was an informal training program, worked in
14 an area called television and radio production.

15 Q. What did that mean?

16 A. That I sent television film and commercials to
17 radio stations for the various schedules that the
18 agency had for their clients. It was kind of a
19 clerk. It was just a training area. That's really
20 what it was. The agency would schedule commercial
21 time for a client and the film had to go to that
22 station and maybe some other correspondence and I
23 was responsible to make sure that film got to those
24 stations and met the schedule.

25 Q. Did the agency maintain a copy of the

1 film?

2 A. I don't know.

3 Q. You just got one copy that it was you
4 were responsible to send on?

5 A. No. Sent the request to the production company
6 that made the film and then they would ship it.

7 Q. In other words, you wouldn't have one
8 inhouse?

9 A. No.

10 Q. Would there be a number of production
11 companies that would be doing work for McCann,
12 Erickson?

13 A. Yes.

14 Q. Depend upon the area of the advertising?

15 A. Yes.

16 Q. Did McCann, Erickson do any advertising
17 for cigarettes?

18 A. I don't recall that they did.

19 Q. Did you hold the same position for two
20 years?

21 A. Oh, for some of the last few months I was kind
22 of assistant account man in residence. I worked
23 with some people at the Colgate account. They
24 thought I might like to change jobs, and I did, to
25 the account service area.

1 Q. What training did you receive?

2 A. Worked in the production area, at least sat in
3 on commercial production and sat in on meetings on
4 the accounts that I was responsible for sending the
5 film for.

6 Q. You say you sat in on commercial
7 production. You mean you watched them filming?

8 A. Yes. Tried to learn the trade and terms.

9 Q. That's all you would do, go there and
10 watch them film it and then that would be the end of
11 your day?

12 A. Yes, or go back to the office and do some
13 paperwork.

14 Q. Were you monitoring what they were doing
15 to make sure they were doing it properly or just
16 observing?

17 A. Just observing and learning.

18 Q. Sounds like a good job for me.

19 A. Better than the mail room, that's all.

20 Q. Then you went with American Sugar?

21 A. Yes, sir.

22 Q. What did you do for them?

23 A. I went down -- it's more strict.

24 As a promotion assistant, promotion
25 manager; not really very structured company.

1 Q. What were your responsibilities
2 specifically?

3 A. I worked in the promotion area and advertising
4 area, wrote promotional pieces and got bids for
5 printing and worked with the advertising agency.

6 Q. Did you have any training to write
7 promotional pieces?

8 A. No.

9 Q. They just sat you there and said we want
10 you to write some promotional pieces for this
11 product?

12 A. Yes.

13 Q. Give us the example of the type of
14 material that you wrote.

15 A. If we were going to do a promotion of a store
16 retail store, grocery store, we would write a
17 brochure to send to that store and I would write the
18 copy.

19 Q. Did you have the same responsibilities
20 for the four years that you were at American Sugar?

21 A. No. It varied. I worked as a -- became a
22 brand manager on the Domino sugar product which was
23 the major product and some new product areas.

24 Q. Did you work on creating any advertising?

25 A. I worked with the advertising agency.

1 Q. What capacity?

2 A. Worked with them in meeting media schedules and
3 looking at the advertising they presented along with
4 my boss.

5 Q. Did you learn anything from that
6 experience in terms of advertising?

7 A. Oh, how ads are made and what copies should go
8 in and those kind of things, continuation of the
9 training.

10 Q. What did you do in terms of how ads are
11 made?

12 A. I learned the production process, what had to
13 go into an ad and the kind of film and the printing
14 process.

15 Q. Did you learn why certain advertisements
16 were used as opposed to others, why certain
17 advertisements were more successful than others?

18 A. No.

19 Q. No, you never did any of that?

20 A. No.

21 Q. You just learned physically how it was
22 played out and how it was sent to the printer and
23 how it was paid for, things like that?

24 A. Yes.

25 Q. Very mechanical things?

1 A. Yes.

2 Q. You went to Lennen & Newall. Right?

3 A. Yes.

4 Q. What did you do for them?

5 A. I worked on the Colgate-Palmolive account.

6 Q. What did you do for them?

7 A. I was an account executive primarily in the new
8 products area.

9 Q. What were your responsibilities?

10 A. Developing marketing plans, doing some sales
11 analysis, working with the media people.

12 Q. Was that your first experience in
13 marketing?

14 A. Well, little bit more with American Sugar, yes,
15 but different. But, yes, primarily.

16 Q. Did you receive any training in marketing
17 when you were at Lennen & Newall?

18 A. Just worked.

19 Q. In other words, they gave no guidance and
20 said you're in charge of developing marketing plans
21 and sales analysis and didn't tell you how to do it
22 at all?

23 A. I wasn't in charge. I guess I knew some of it
24 by working at other agencies and I got some help
25 there, but I learned how to develop sales analysis

1 and worked with it. They helped a great deal at the
2 time.

3 Q. What did you do about developing
4 marketing plans?

5 A. How they should be written and what should go
6 into them.

7 Q. Were there certain guidelines that you
8 used in apply to creating marketing plans?

9 A. There was a format.

10 Q. Tell us what the format was.

11 A. It would start with an objective and a strategy
12 and then discuss those two topics.

13 Q. Objective, strategy.

14 The objective is to sell a product?

15 A. That's right.

16 Q. The strategy is how to sell it?

17 A. That's it.

18 Q. Objective is easy, let's get to the
19 strategy. Were there certain principles that you
20 learned in developing a strategy for marketing a
21 particular product?

22 A. I don't recall specific principles.

23 Q. Were there certain steps that you would
24 go through in developing a strategy for marketing a
25 product?

1 A. You would think what you thought best would
2 help sell that product and put that in the strategy.

3 Q. But you based that upon something, didn't
4 you, other than just your gut reaction?

5 A. Oh, creative process.

6 Q. Tell us the things that you brought to
7 bear in this creative process?

8 A. Well, I don't recall specifically no one person
9 brought everything to bear on the strategy.

10 Q. Were there any steps quantitative steps
11 that were taken, any analysis that was done other
12 than just this creative artful sort of technique?

13 A. I don't recall any quantitative steps were
14 taken.

15 Q. Anything to determine whether a market
16 existed for a product?

17 A. I think looked at sales data within the area
18 they might want to produce a new product and see if
19 we could get into that area, yes.

20 Q. Where did you do that?

21 A. No. The client would do that.

22 Q. So the client would say we want to sell a
23 product in this area because we think sales are
24 going to increase or we can get a piece of that
25 particular market. Is that correct?

1 A. Primarily, yes.

2 Q. Would they show you the studies they
3 relied upon in coming to that conclusion?

4 A. I don't recall having seen any.

5 Q. You would not gather information
6 independent of the information supplied to you by
7 your client. Is that correct?

8 A. Most often not.

9 Q. What product did you work on when you
10 first came with Lennen & Newall?

11 A. It was a female health and beauty aid product,
12 skin care. It never went anywhere.

13 Q. So much for creative thinking.

14 A. Yes.

15 Q. How long did you work on that product?

16 A. Oh, about a year, maybe a little longer.

17 Q. Then what did you do?

18 A. Then I worked on some other new product areas
19 and product called Cashmere Bouquet.

20 Q. I heard of that one.

21 Was that a product already being marketed?

22 A. Yes, it was.

23 Q. What did you do on that account?

24 A. Well, worked with the brand people and
25 developed some line extensions for the product.

1 Q. What's a line extension?

2 A. That product was primarily a bar of soap and a
3 powder. We did other variations of that soap and
4 powder, fragrances.

5 Q. How long did you do that?

6 A. For most of the remaining time I was at Lennen
7 & Newall -- for all the time at Lennen & Newall.

8 Q. When you were working on Cashmere Bouquet
9 did you see any quantitative studies, any marketing
10 analysis, anything like that?

11 A. No. I don't recall any.

12 Q. Were you responsible for anything in
13 particular in terms of advertising or what?

14 A. Some of the package development, help in
15 consultation with a client to develop the packaging.

16 Q. How did you do that?

17 A. They would bring a designer in, design it and
18 they would talk with us if we liked the package,
19 shape or colors.

20 Q. Companies dealt specifically with
21 designing packages?

22 A. I believe they used that kind of company, yes.
23 Also had an inhouse designer who would decide what
24 goes on the outside of the package, Colgate.

25 Q. You wouldn't have anything to do with

1 that?

2 A. No.

3 Q. During the time period you were with
4 Lennen & Newall, did you become aware that Lennen &
5 Newall worked on cigarette accounts?

6 A. I think I recall they had a cigarette account.

7 Q. Do you recall any? Do you have any
8 recollection what cigarette that was?

9 A. No.

10 Q. Do you have any recollection of anyone
11 who worked on a cigarette account?

12 A. No.

13 Q. How large is Lennen & Newall?

14 A. I don't recall how large it was. It was fairly
15 good size.

16 Q. What's fairly good size?

17 A. I don't know how to describe it. They had
18 several large accounts, Colgate being one and
19 Stokely Van Kemp being another and a large gas
20 company at the time, I don't remember which it was.
21 So several big accounts, so that's how I said fairly
22 good size.

23 Q. Is a cigarette account considered a big
24 account in the advertising world?

25 A. At some places, yes.

1 Q. At Lennen & Newall was it considered a
2 big account?

3 A. I don't recall whether it was considered big or
4 not. I didn't hear much about it. That was kind of
5 off in another area.

6 Q. But you heard about the gas company and
7 you heard about Stokely?

8 A. Stokely Van Kemp.

9 Q. What was it?

10 MR. SHAPIRO: Is any of this truly
11 relevant? I haven't said anything. I understand
12 you want to get his background experience, but you
13 know what Lennen & Newall was doing with cigarettes.
14 He wasn't doing it. It seems to me to be hardly
15 relevant.

16 MR. EDELL: Well, it might lead to the
17 discovery of admissible evidence.

18 MR. SHAPIRO: Pretty impossible.

19 Q. What about Doyle, Dane & Bernbach?

20 A. I was there for a very brief period on a
21 Bristol Meyers product.

22 Q. Any particular product?

23 A. Metro-Cal product.

24 Q. What were your responsibilities?

25 A. I was only there for three or four months, so I

1 really didn't develop any.

2 Q. Then you were with Ted Bates?

3 A. Yes.

4 Q. What did you do for them?

5 A. I worked on ITT Continental Company, which is
6 Wonder Bread.

7 Q. What did you do?

8 A. I worked on some bread products.

9 Q. Then after Ted Bates?

10 A. Well, I went for a brief time -- I'm sorry, I
11 left out Gardner Advertising.

12 Q. What did you do there?

13 A. Worked on new products, new business.

14 Q. Developing new business?

15 A. Trying to make presentations to clients for new
16 business.

17 Q. How long did you stay there?

18 A. Approximately six months.

19 Q. What year does that bring us up to?

20 A. 1970.

21 Q. I'm sorry?

22 A. 1970.

23 Q. Then what happened?

24 A. I went to Lorillard.

25 Q. How is it that you came to Lorillard?

1 A. I answered an ad from the newspaper.

2 Q. What did you do when you first came with
3 Lorillard?

4 A. I worked on True cigarettes.

5 Q. With whom did you work?

6 A. I was brand manager.

7 Q. That was the first time that you had any
8 experience with cigarettes. Is that correct?

9 A. That's correct.

10 Q. What were your responsibilities as brand
11 manager?

12 A. I was responsible for the direction, marketing
13 for the brand.

14 Q. Responsible for the direction and the
15 marketing?

16 A. Marketing direction, I'm sorry. Marketing
17 direction, development of the advertising for the
18 brand.

19 Q. What happened the first day you were
20 there?

21 A. I met some people at the company.

22 Q. Any particular people?

23 A. Personnel. I don't recall, no.

24 Q. What is your first recollection of your
25 being introduced to the True cigarette brand?

1 A. I really don't have a first recollection, just
2 saw what -- it goes together.

3 Q. Did you receive any orientation as to the
4 brand?

5 A. I received some orientation, I don't recall
6 exactly what.

7 Q. What did that include?

8 A. I don't specifically recall.

9 Q. Do you generally recall?

10 A. Well, I'm sure I talked to some people.

11 MR. SHAPIRO: Don't guess. He's asking
12 do you recall.

13 A. No, I don't recall.

14 MR. EDELL: The witness used the term
15 specifically.

16 Q. I'm not asking you what specific
17 conversations you had. Generally, what was the
18 orientation? Did they stick you in the room and say
19 you're brand manager, go to it? Here's somebody
20 that worked on the account, here's some documents
21 that might give you some information as to what
22 we've done in the past. Generally what happened?

23 A. Well, I came in, I was introduced to people, I
24 don't recall whom. And I think I had some meetings,
25 but I don't recall generally or specifically what

1 the meetings were.

2 Q. You don't recall what the meetings dealt
3 with at all?

4 A. No, sir.

5 Q. Did you do anything to orient yourself to
6 what True cigarettes were all about and what the
7 marketing had been previously?

8 A. No. I talked with the agency.

9 Q. What agency?

10 A. The time it was Foote, Comb & Belding.

11 Q. Who were you talking to?

12 A. I don't recall who. Very brief association
13 with the company.

14 Q. What did you do?

15 A. Worked on the advertising for the brand.

16 Q. Did you come with a new advertising theme
17 campaign?

18 A. No. There was one in the works at the time.

19 Q. What do you mean by there was one in the
20 works?

21 A. Advertising agency was dealing with one.

22 Q. This was Foote, Cohen & Belding?

23 A. Yes.

24 Q. What advertising theme were they creating
25 at that time?

1 A. 99 percent lower in tar and nicotine than in
2 all cigarettes.

3 Q. As brand manager did you have any inputs
4 as to whether or not that was a theme that would be
5 beneficial to the True cigarette and the sale of it?

6 A. No.

7 Q. Who decided that?

8 A. I don't know. It was decided when I got there.

9 Q. It had already been okayed?

10 A. Yes.

11 Q. This is what we're going with, 99 percent
12 lower in tar theme. Is that correct?

13 A. Yes.

14 MR. SHAPIRO: Might have been 98.

15 Q. You didn't do anything to determine
16 whether or not that was going to be a viable
17 advertising theme at all. Is that correct?

18 A. No, sir, that's correct.

19 Q. Was it? Was it a good advertising theme?

20 A. Yes, I believe it was.

21 Q. Sales went up?

22 A. Yes.

23 Q. Was there any advertising testing that
24 was done to determine whether or not it was a good
25 theme or not?

1 A. Not that I recall.

2 Q. Other than the fact that sales went up,
3 was there any other reason or any other fact upon
4 which you base your statement that it was a good
5 advertising theme?

6 A. Well, talked about the position of the brand,
7 low tar and nicotine and good taste.

8 MR. EDELL: I'm sorry, would you repeat
9 that?

10 (Read by the reporter.)

11 Q. What do you mean by position of the brand?

12 A. Well, what the brand is.

13 Q. What do you mean by what the brand is?

14 A. Low tar and nicotine and good tasting cigarette.

15 Q. That was the image trying to be projected?

16 A. Yes.

17 Q. Why?

18 A. Because that's what the brand was and there was
19 a market and -- there was a market there.

20 Q. How do you know there was a market there?

21 A. People had been moving to low tar and nicotine
22 cigarettes for some time.

23 Q. How do you know that?

24 A. Looked at the sales over a period of time.

25 Q. The sales of True cigarettes or the sale

1 of all low tar and nicotine cigarettes?

2 A. Other low tar and nicotine cigarettes.

3 Q. Where did you get that information from?

4 A. Maxwell.

5 Q. That's a service that was used by
6 Lorillard?

7 A. Yes, it was.

8 Q. Did you have any understanding as to why
9 there was a trend in the market to switch to low tar
10 cigarettes?

11 MR. SHAPIRO: When are you talking about
12 now? At any time or when he started with the
13 company?

14 MR. EDELL: What?

15 MR. SHAPIRO: There's no timeframe.

16 You said did you have an idea, did you
17 personally have an idea why there was a trend.
18 That's not circumscribed by time.

19 MR. EDELL: Let me clear it up.

20 Q. Mr. Mau, I thought you told us there was
21 a trend in the market to move to the low tar
22 cigarettes. Is that correct?

23 A. That's correct.

24 Q. Okay. You told us that that trend had
25 begun prior to 1970, isn't that correct, prior to

1 your coming with Lorillard?

2 A. Yes.

3 Q. You told us that you based that statement
4 at least in part on the statistical information
5 contained in the Maxwell report. Correct?

6 A. Historical sales data, yes.

7 Q. Furnished to you by the Maxwell report.

8 Correct?

9 A. Yes.

10 Q. Did you have an understanding or an
11 opinion as to why there was this trend in the
12 marketplace to switch to a lower tar cigarette?

13 MR. SHAPIRO: Talking when he started
14 with the company, that was my problem. Okay.

15 A. At that time, no.

16 Q. At any time?

17 A. As I worked on the brand, yes, sir.

18 Q. What was your opinion and your impression
19 as you worked more and more on the brand as to why
20 people were switching to a low tar cigarette?

21 A. Well, I think that they had -- I know they had
22 read, been informed about the information from the
23 government about smoking and health and people
24 decided that they, from the information they read,
25 were moving to lower tar and nicotine cigarettes.

1 Q. The information that you're talking about
2 is information through the government with respect
3 to the health hazards, the potential health hazards
4 associated with cigarette smoking. Is that correct?

5 A. That's correct.

6 Q. So that it was your impression that the
7 people were switching to low tar cigarettes because
8 the information supplied to them by the government
9 suggested that it would be in their better interest
10 in terms of health to move to lower tar cigarettes.
11 Is that correct?

12 A. I believe people were health concerned and
13 believed what the government was, the information
14 they were receiving from the government, yes.

15 Q. What information was that that they were
16 receiving?

17 A. Well, the information from the government,
18 FTC about low tar and nicotine cigarettes.

19 Q. What about them?

20 A. I think the implication that it might be more
21 beneficial to move to lower tar and nicotine
22 cigarettes.

23 Q. In terms of health of the smoker.
24 Correct?

25 A. Yes.

1 Q. Not talking more beneficial cosmetically?

2 Talking about health-wise. Right?

3 A. Yes.

4 Q. Terms of possibly contracting some type
5 of pulmonary or heart disease. Correct?

6 A. I don't know exactly what they thought, but
7 they were moving to low tar and nicotine cigarettes.

8 Q. You told us you gained this impression
9 because of information supplied by the government.

10 What were the health hazards that you were talking
11 about?

12 A. Well --

13 Q. Potential health hazards, excuse me.

14 A. I can't -- I think the people believed that
15 from the information that they had read that there
16 were health hazards, heart, lung, cancer.

17 Q. And that smoking low tar cigarettes would
18 reduce that potential health hazard. Correct?

19 A. I don't know.

20 MR. SHAPIRO: That's not the question.

21 MR. EDELL: Sure it is.

22 MR. SHAPIRO: Well --

23 MR. EDELL: There's a question mark at
24 the end of it.

25 MR. SHAPIRO: But it's a statement. You

1 may have put a question at the end.

2 MR. EDELL: I said "correct?" That makes
3 it a question. Want to read it back?

4 MR. SHAPIRO: Yes, I want to hear it. I
5 thought it was a tag-on to your previous question.

6 MR. EDELL: Are you objecting to the form?

7 MR. SHAPIRO: Yes.

8 (Read by the reporter.)

9 Q. Has your opinion changed as to why people
10 smoke low tar cigarettes?

11 A. No.

12 Q. In fact, much of the advertising and the
13 advertising campaigns by True cigarettes work on the
14 premise that people switch from one cigarette to low
15 tar cigarette for health reasons. Isn't that right?

16 MR. SHAPIRO: Object to the form.

17 A. I would say people switch from -- switch to low
18 tar cigarettes because they believe the information
19 that they read and are health concerned and switch
20 to low tar nicotine cigarettes.

21 Q. That's your market? Your market is the
22 person concerned about their health and they want to
23 reduce what they perceive to be the risk by smoking
24 low tar?

25 A. Yes.

1 Q. You advertise to those people. Correct?

2 That's your market, that's who you advertise to?

3 A. Low tar and nicotine smoker, yes.

4 Q. People concerned about their health.

5 Right?

6 A. Yes, sir.

7 Q. You have done that at least by informing
8 them that your cigarette, low tar cigarette, True
9 cigarette, will be more healthful to them?

10 A. No, sir.

11 Q. Let's take a look at some of these
12 advertisements.

13 MR. EDELL: Mark this one as Mau-1 for
14 Identification.

15 (Mau-1 marked for Identification.)

16 Q. Have you ever seen that advertisement,
17 sir, talking about Mau-1?

18 A. Yes.

19 Q. When?

20 A. I saw it most recently in Mr. Ave's deposition.

21 Q. You reviewed Mr. Ave's deposition?

22 A. Yes.

23 Q. In preparation for this deposition?

24 A. Yes, sir.

25 Q. You reviewed the exhibits annexed to his

1 deposition?

2 A. I saw them, yes.

3 Q. Why?

4 A. They were in the deposition.

5 Q. Why did you review his deposition?

6 A. Just thought it would be helpful.

7 Q. What way?

8 A. In preparation for this deposition.

9 Q. Give you better idea what you would
10 expect during the course of this deposition. Right?

11 A. Yes, sir.

12 Q. You had a chance to think about the
13 questions in advance of the deposition. Correct?

14 A. I read Mr. Ave's deposition.

15 Q. With the view of anticipating what
16 questions I would ask here today. Right?

17 A. To some degree, yes.

18 Q. Well, that's the major reason why you did
19 it?

20 A. Yes.

21 Q. Now, tell us what message you were
22 attempting to convey to the reader of Mau-1 for
23 Identification?

24 A. I'd heard enough to make me decide one of two
25 things, I quit or smoke True. Well, I think that

1 what we were doing --

2 MR. SHAPIRO: You might want to establish -

3 I don't know Mr. Mau was involved at all in this. I
4 don't want to give the misimpression he was at that
5 time involved with True cigarettes.

6 A. That's correct, I was not on True cigarettes at
7 the time.

8 Would you repeat the question?

9 MR. SHAPIRO: Off the record.

10 (Read by the reporter.)

11 Q. When I say you, I'm talking about
12 Lorillard's manufacture of True. Right?

13 A. Yes.

14 Q. Okay.

15 A. This establishes or sets up or confirms what
16 was happening in the marketplace. Here is a person,
17 golfer, who had heard a great deal or all of the
18 information that had been published over the years.
19 He had thought about it and decided to smoke. As a
20 matter of fact, he smokes low tar and nicotine
21 cigarettes and smokes True. That's a compact way of
22 talking about the dynamics in the marketplace.

23 Q. The smoker says, I have one of two
24 choices. Either I stop smoking or I smoke True
25 Cigarettes. Correct?

1 A. No, it doesn't say that.

2 Q. No?

3 A. No, it doesn't.

4 Q. You're a journalist by training. It says -

5 MR. SHAPIRO: I don't think getting a
6 degree in journalism makes a journalist.

7 Q. I heard enough to make me decide one of
8 two things. Does that suggest to you that he has
9 decided that there are other options available to
10 him other than two things?

11 A. No.

12 Q. The two things referred to after the
13 colon is quit or smoke True. Correct?

14 A. It doesn't represent options. Talking about
15 the dynamics in the marketplace that he had. Like a
16 lot of people he had heard all the things about
17 smoking, heard, read about what the FTC had said
18 about low tar and nicotine cigarettes, implied or
19 said at one point they may be -- were better for you,
20 published the tar and nicotine numbers in the ads,
21 FTC publishes on a relatively regular basis. He had
22 digested that information, thought about it like a
23 lot of people, decided to smoke and smoke a low tar
24 cigarette and said I smoke True.

25 I think that is a compact way as best way

1 I can say, to talk about what was happening in the
2 marketplace.

3 Q. But I want to get back to the original
4 question. Mau-1 for Identification, doesn't it say
5 this golfer, as you say, digested the information
6 concerning cigarette smoking and health and came to
7 one of two conclusions, either I quit or smoke True
8 cigarettes?

9 A. No, it doesn't say that.

10 Q. It doesn't say that?

11 A. No.

12 Q. What other options does it say he has?

13 A. Doesn't talk about options.

14 Q. What other decisions does it say he can
15 make?

16 A. Made decision -- talks about what he had gone
17 through and to smoke low tar cigarettes.

18 Q. Okay.

19 A. And smoke True.

20 Q. As an option to quitting. Is that
21 correct?

22 A. Doesn't have --

23 Q. Why doesn't it mention --

24 A. Quit in that ad is cute, maybe a gutsy word.

25 Talks about where he is going, what he's done,

1 information he's read, all the plethora of
2 information he read about cigarettes and health.

3 Q. What do you mean a cute or gutsy word?

4 A. It's one of the things that people go through
5 when they read all of this information. Bad
6 description, but it's an unusual word for an ad and
7 it's a headline compacted and represents what's
8 happening in the marketplace.

9 Q. The reason when you say -- I mean
10 Lorillard -- used this golfer here is because he
11 fits the profile of the smoker who is deciding to
12 change to low tar cigarettes. Right? There's a
13 reason why you picked that particular image.
14 Correct?

15 A. He's representative of a lifestyle, a man 30,
16 35 or 45.

17 Q. Better educated than the average smoker?

18 A. That is the True smoker.

19 Q. More affluent than the average smoker?

20 A. True smoker is, yes, sir.

21 Q. That's the reason you chose to use him as
22 a person in the ads let's say as opposed to a ditch
23 digger. Correct?

24 A. I don't know why he was chosen.

25 Q. Do you have any opinion why he was chosen

1 as opposed to a ditch digger?

2 A. No, sir.

3 Q. Not one way or the other?

4 A. No.

5 Q. You think the ad would have the same
6 impact using a ditch digger than using somebody as
7 golfer?

8 A. Discussed a minute ago more of the True smoker,
9 or the demographics of the True smoker.

10 Q. What you try to do is try to give the
11 person, the True smoker or the potential True smoker,
12 an image that most closely they associate with
13 themselves, correct, by using this particular man in
14 the advertisement?

15 A. That man is just representative of a bunch of
16 people, typical of people.

17 Q. How do you decide on what individual you
18 want to use in an advertisement, what you want to
19 project that individual to be? How do you make that
20 decision?

21 A. To be close to what we think the smoker of that
22 brand is.

23 Q. So they associate with that. Correct?

24 A. I don't know if they associate. It's
25 understand it, they look at the man more like them

1 maybe. Maybe associate is right.

2 MR. EDELL: Mark this Mau-2 for
3 Identification.

4 (Mau-2 marked for Identification.)

5 Q. Sir, tell us what Mau-2 is.

6 A. It's a copy of, Xerox copy of a True
7 advertisement similar to Mau-2.

8 Q. Mau-1.

9 A. Yes. Copyright 1975. It says, "I thought
10 about all I'd read and said to myself, either quit
11 or smoke True. I smoke true. The low tar, low
12 nicotine cigarette. Think about it."

13 Q. Similar to your response to Mau-1, you're
14 testifying that ad does not suggest that the smoker
15 has come to the conclusion that they have one of two
16 avenues to take with respect to their cigarette
17 smoking. Is that right?

18 A. That's right, I don't think that ad says that
19 at all.

20 MR. EDELL: Mark this for Identification.

21 (Mau-3 marked for Identification.)

22 Q. Now, referring to Mau-3, am I correct
23 this is another one in this advertising theme used
24 by True cigarettes?

25 A. Yes, sir.

1 Q. This was, in fact, referring to Mau-3, an
2 advertisement that in fact was used by Lorillard to
3 advertise True cigarettes. Correct?

4 A. I can't be sure of that answer.

5 Q. How do you confirm that fact?

6 A. I would have to go to the files and see if it
7 actually ran.

8 Q. What files would you go to see?

9 A. I don't know. I don't know where the files
10 would be. Probably filed away someplace. I don't
11 know where it is within the filing system.

12 Q. If your job depended upon that, where
13 would you go look?

14 A. Go ask my secretary to find where we send old
15 files. She would have to find it.

16 Q. That would be the only way that you could
17 determine whether in fact the advertisement ran in
18 the newspaper or magazine or whatever. Is that
19 correct?

20 A. That's all I can think of, yes, sir.

21 Q. No way to contact the agency that you
22 were using at the time to determine whether or not
23 the ad ran. Is that correct?

24 A. Yes, sir.

25 Q. Did you have contact with the advertising

1 agency Foote, Cohen & Belding when you first came?

2 A. Yes.

3 Q. Did you have occasion to meet with
4 representatives of Foote, Cohen & Belding?

5 A. Yes.

6 Q. Did you have occasion to receive contact
7 reports from them?

8 A. Yes.

9 Q. Tell us what a contact report is.

10 A. It's notes of a meeting.

11 Q. Memorandum typed up from meeting or
12 actually handwritten notes?

13 A. Typed.

14 Q. Those contact reports are maintained for
15 a period of time. Is that correct?

16 A. No, not necessarily.

17 Q. Read them and throw them away?

18 A. I do, yes, sir.

19 Q. Is there a copy that's maintained in a
20 file?

21 A. Not necessarily, no.

22 Q. There's no usual practice. Is that
23 correct?

24 A. That's correct.

25 Q. Do you know whether the advertising

1 agency maintains a copy in its file?

2 A. No, I don't.

3 Q. When you worked in the various
4 advertising agencies you described, McCann, Erickson,
5 Lennen & Newall, did you ever prepare contact
6 reports?

7 A. Yes.

8 Q. What did you do with them?

9 A. I kept them for awhile.

10 Q. Then what did you do with them?

11 A. I don't recall.

12 Q. Never recalled destroying them, do you?

13 A. Yes, I throw them away.

14 Q. When would you throw them away?

15 A. It was no standard time. After a period of
16 time.

17 Q. Whenever you felt like it?

18 A. After I felt they were not useful any more,
19 didn't need them.

20 Q. You would make a periodic review of your
21 contact reports and evaluate whether or not they
22 still were relevant. Is that correct?

23 MR. SHAPIRO: Objection to the form.

24 A. Well, I don't --

25 MR. EDELL: What's wrong?

1 MR. SHAPIRO: The form suggests that, you
2 know, he reviews these contact reports as opposed to
3 looking through older ones and would chuck things.
4 You're suggesting it was more organized in the tone
5 of your question than may be the case.

6 MR. EDELL: Then he can tell me it's not
7 correct.

8 MR. SHAPIRO: But I objected to the form.
9 You asked why I thought implicit in that somebody
10 could interpret it that way.

11 Q. Would you answer the question?

12 A. Let me hear the question back.

13 (Read by the reporter.)

14 A. I can't characterize any periodic review. I
15 don't recall how I did it. There was no standard.

16 Q. You would actually, though, spend the
17 time deciding whether or not a contact report is
18 relevant or not and then make that decision and
19 discard it or not?

20 A. I don't know if it's that process. I think if
21 I happen to be looking in the book and I saw some
22 that would occur to be old, I throw it away.

23 Q. What book?

24 A. Book I might keep the contact reports in or the
25 file.

1 Q. Who received copies of the contact
2 reports other than yourself?

3 A. People who were in the meeting.

4 Q. Would one go to general file or just
5 copies directed to the individuals who attended the
6 meeting?

7 A. I don't recall any general file.

8 Q. There wasn't a particular client file or
9 a product file that you would maintain?

10 A. I don't recall.

11 Q. I'm sorry?

12 A. I don't recall, no.

13 Q. When was the last time you got a contact
14 report?

15 A. Couple of days ago.

16 Q. Did the contact report show to whom all
17 the copies were sent?

18 A. I suspect it did. I didn't look at the list.

19 Q. Did you, prior to this deposition, ever
20 see a contact report for True cigarettes regarding
21 True cigarettes?

22 A. Yes.

23 Q. Did you review any contact reports in
24 preparation for deposition here today?

25 A. No, sir.

1 Q. Is there a reason why?

2 A. Didn't think about it, didn't occur to me.

3 Q. You knew that you were coming here today
4 to testify with respect to True cigarettes as far
5 back as 1972. Correct?

6 A. That's correct.

7 Q. You knew that you didn't fully recall all
8 the facts and all the meetings that occurred back in
9 1972. Correct?

10 A. That's correct.

11 Q. But you made no effort to review any
12 documents in order to refresh your recollection with
13 respect to those occurrences. Is that correct?

14 A. I didn't review any documents, no.

15 Q. So the answer to my question is I am
16 correct, correct you made no effort to review any
17 documents. Is that correct?

18 A. That's correct.

19 Q. Didn't you think that would be helpful to
20 you in order to testify today to take a look at
21 documents that might refresh your recollection?

22 A. I had no idea what might or might not be
23 helpful.

24 Q. You reviewed Mr. Ave's deposition didn't
25 you?

1 A. Yes.

2 Q. You had a general idea what we were going
3 to discuss here today. Right?

4 A. Yes, sir.

5 Q. You knew that many of the inquiries would
6 be in an area that you really don't presently have
7 any fresh recollection of the facts. Correct?

8 A. I don't know that until the questions are asked.

9 Q. You knew we were going to discuss what
10 occurred with respect to the marketing and sale of
11 True cigarettes back in '72. Right? You had no
12 idea we were going to do that. Is that correct?

13 A. I didn't want to guess on what we were or
14 weren't going to talk about.

15 Q. You're telling me after you reviewed
16 Mr. Ave's deposition that you had no idea that we
17 were going to sit here today and discuss the sale
18 and marketing and advertising of True cigarettes
19 from 1972 on?

20 A. In general terms, yes.

21 Q. In fact, I would ask you specific
22 questions with respect to that subject, right, ask
23 Mr. Ave and there was no reason to doubt you were
24 going to be asked the same questions or similar
25 questions?

1 A. Possibly, yes. I don't know what questions you
2 were going to ask.

3 Q. You knew what areas I was going to cover
4 generally?

5 A. Yes.

6 MR. SHAPIRO: Is there any purpose in
7 fighting with the witness?

8 MR. EDELL: I'm not fighting.

9 MR. SHAPIRO: He answered he didn't go
10 schleping looking for stuff to review.

11 MR. EDELL: That's the way you've
12 described it.

13 MR. SHAPIRO: No.

14 Q. Was there any instruction given to you
15 about reviewing documents in preparation for this
16 deposition, sir?

17 A. No, sir.

18 Q. You just decided yourself not to review
19 any documents?

20 A. I just did not review any documents, yes, sir.

21 Q. You figure it would be easier not to
22 review the documents than to review the documents.
23 Is that correct?

24 MR. SHAPIRO: I object to the form. I
25 don't know what you mean by easier.

1 Q. Easier for you to testify here today if
2 you didn't review the documents. Is that correct?

3 MR. SHAPIRO: Still object. I don't know
4 what you mean by easier to testify.

5 Q. You don't understand what I mean?

6 A. I did not review the documents. I don't
7 understand what you mean by easier or not easier I
8 did not review the documents, didn't have any
9 preconception about easier or not easier, I just did
10 not review the documents for this deposition.

11 Q. Was there any conscious reason why you
12 didn't do that?

13 A. No, sir.

14 MR. SHAPIRO: You mean other than he's
15 got a job to do?

16 A. Yes, I've got a job to do.

17 MR. EDELL: Don't put words in the
18 witnesses mouth.

19 MR. SHAPIRO: You're getting cute and
20 take a lot of time. He told you he didn't review it,
21 whatever. We're spending a lot of time on a fact
22 that's established.

23 Q. Are there documents that exist that deal
24 with the marketing and advertising of True
25 cigarettes?

1 A. Yes.

2 Q. Are there any documents that exist with
3 respect to the marketing and advertising of True
4 cigarettes in 1972?

5 A. I don't know.

6 Q. You made no inquiry insofar as that's
7 concerned?

8 A. Yes, that's correct.

9 Q. Did you help in answering interrogatories
10 in this case?

11 A. I talked to, I believe, Mr. Cherry.

12 Q. You never reviewed any documents in
13 preparation for your discussions with Mr. Cherry.
14 Is that correct?

15 A. That's correct.

16 Q. Of course, you answered questions
17 concerning the sale and marketing and advertising of
18 True cigarettes. Right?

19 A. In what respect?

20 Q. With respect to the information supplied
21 to Mr. Cherry.

22 A. I don't recall what two or three questions Mr.
23 Cherry asked me.

24 Q. He didn't come to you and ask you
25 information about the health consequences of

1 cigarettes, that's not your area of expertise?

2 A. That's right.

3 Q. Your area of expertise is advertising and
4 marketing?

5 A. I don't remember the questions Mr. Cherry asked
6 me, sir.

7 Q. What information did you supply to him?

8 A. I don't recall.

9 Q. Do you have any files?

10 A. Yes, I have some files.

11 Q. Tell us about your files.

12 MR. SHAPIRO: He has some files.

13 Q. Just with respect to True cigarettes.

14 A. I have a True file.

15 Q. What's maintained in the True file?

16 A. Which is broken down I believe into three parts.
17 One is sales, one is market research, and another is
18 just general.

19 Q. How far back do those files go?

20 A. I don't know.

21 Q. Do you have a routine of destroying
22 documents after a certain period of time?

23 A. I don't have a -- it's not a set routine that's
24 sometimes -- talking about in my office?

25 Q. In your office, your file.

1 A. If it gets too large to fit into a desk, throw
2 it away or send it to my girl to file.

3 Q. To file?

4 A. To file.

5 Q. Do you know whether or not those files
6 were reviewed by anyone in response to any discovery
7 request in this case?

8 A. Yes, they were.

9 Q. By whom?

10 A. Some lawyers that Mr. Cherry asked that I have
11 my files open for or available for.

12 Q. When did that occur?

13 A. Several months ago.

14 Q. Who is Gordon Flinn, do you know?

15 A. Pardon me?

16 Q. Gordon Flinn.

17 A. Yes. He works for the company.

18 Q. What capacity?

19 A. Director of marketing research.

20 Q. Do you know where he is today? I don't
21 mean this very second.

22 A. No, I don't.

23 Q. Do you know where he went after he left
24 the company?

25 A. No, I don't.

1 Q. Does Lorillard perform any switching
2 studies?

3 A. Yes, they do.

4 Q. They prepare such studies or have such
5 studies prepared for them back in 1970 when you came?

6 A. I don't recall.

7 Q. When is your first recollection of seeing
8 a switching study?

9 A. I would have to say, approximation, maybe the
10 mid to mid-70s I guess.

11 Q. What is the purpose of the switching
12 study?

13 A. It's to provide us with demographic information
14 on our brands and competitive brands.

15 Q. Is there a reason? Demographic
16 information just for your pure interest or practical
17 application for that information?

18 A. Like to know what the other -- who the people
19 are, the type that smoke the cigarette.

20 Q. Why?

21 A. So we know where they might -- what brands they
22 might be switching from and what brands and people
23 smoke our cigarettes switch to.

24 Q. From a practical prospective how does
25 that help you having that information?

1 A. Well, we see we are losing our business or
2 where we might be gaining market share.

3 Q. How does that information help you from a
4 practical prospective?

5 A. Well, if we are losing more to a lower tar
6 cigarette, we might, as we did on True, lower the
7 tar and nicotine or on Kent might bring out a line
8 extension or may do nothing.

9 Q. Does it affect in any way the manner in
10 which you market and advertise your cigarettes?

11 A. Not totally, no, sir. It's a piece of
12 information.

13 Q. How about in part, does it affect your
14 advertising in part?

15 MR. SHAPIRO: Object to the form.

16 A. I cannot say the specific switching information
17 has an impact on our advertising.

18 Q. How about the conclusions?

19 A. Or the conclusions.

20 Q. How do you know if your advertising is
21 successful?

22 A. We hope to tell by sales of the product.

23 Q. That's the only barometer that you use?

24 A. That's the best, yes.

25 Q. That wasn't the question.

1 A. Yes, sir.

2 Q. It's the only barometer that you use?

3 A. Yes.

4 Q. Well, if sales go down, how do you know
5 if it's your advertising or whether it's your
6 product?

7 A. Well, we don't sometimes.

8 Q. What do you do to determine whether or
9 not it's the product or the advertising?

10 A. Well, the judgment most we know from if we
11 think the product's any good and sometimes we just
12 change the advertising on judgment.

13 Q. What factual information do you use to
14 change the advertising?

15 A. I don't know if there's any factual information.
16 More often it's judgment.

17 Q. Do you base that judgment on any facts?

18 A. Not necessarily, no.

19 Q. What do you base it on?

20 A. If we feel the sales are going down or if we
21 feel on judgment that the advertising is either not
22 working or it's run too long or it's not right in
23 the marketplace at that particular time.

24 Q. Did you do any studies to determine all
25 of these different features that you've described?

1 A. On advertisings currently running, no.

2 Q. Ever?

3 A. Not that I recall.

4 Q. I'm sorry?

5 A. Not that I recall.

6 Q. You don't ever recall Lorillard doing any
7 type of study or research regarding advertisement
8 for True cigarettes. Is that correct?

9 MR. SHAPIRO: That's a different question.

10 MR. EDELL: It's the question posed to
11 him.

12 A. Which question would you like?

13 Q. The one question right here right now.

14 A. Read it back.

15 MR. SHAPIRO: Read the last question.

16 (Read by the reporter.)

17 A. I recall us doing advertising for -- research
18 for True advertising, yes.

19 Q. What is your recollection in that regard?

20 A. We have done some portfolio studies.

21 Q. What's that?

22 A. It's placing an ad into a looseleaf binder we
23 happen to call a portfolio along with other general
24 advertising that -- cigarettes necessarily, and
25 showing it to consumers.

1 Q. How often do you do that?

2 A. There's no set pattern how often we do it.

3 Q. Do you do that at least once for a
4 particular advertising theme?

5 A. I cannot be -- answer that not always, no. Not
6 every advertising theme has gone through a portfolio
7 test.

8 Q. Do most of the time you do that?

9 MR. SHAPIRO: I object to the form.

10 Q. Majority of the time?

11 A. I can't characterize that, the times.

12 Q. Tell us the instances which you recall in
13 which portfolios were done regarding True cigarettes.

14 A. What time period?

15 MR. SHAPIRO: The time period we're
16 dealing with, so the record is clear, is '72
17 to '82, that's the relevant time period.

18 Q. That's what your counsel considers to be
19 the time period.

20 MR. SHAPIRO: That's what the Court
21 considered to be the relevant time period, too.

22 MR. EDELL: That's a matter of
23 interpretation.

24 A. The last one I recall is called the "You Found
25 It" campaign which ran in 19 -- part of '82 and part

1 of '83.

2 Q. That was the last one. Do you remember
3 any before that?

4 A. That's the last one I recall, I'm sorry.

5 Q. Do you recall any one other than that?

6 A. No, I don't recall.

7 MR. EDELL: Let's take a break.

8 (Recess.)

9 Q. Before I forget, Mr. Mau, you told us you
10 reviewed Mr. Ave's deposition and the exhibits
11 annexed. Did you review any other documents other
12 than that?

13 A. I read Mr. Judge's deposition.

14 Q. When you came with Lorillard, were they
15 still placing their advertisements on television?

16 A. Yes, they were.

17 Q. There come a point in time when they no
18 longer placed their advertisements on television?

19 A. Yes.

20 Q. Do you recall when that was and why?

21 A. It was January, 1971. It was a government
22 decree.

23 Q. How did you become aware of that fact?

24 A. Somebody told me.

25 Q. You knew before the date that you no

1 longer placed advertisements on television that it
2 was coming, though, didn't you?

3 A. Yes.

4 Q. And that there were plans being made to
5 increase advertising in other media form when the
6 advertisements were being taken off television.

7 Isn't that correct?

8 A. I'm not sure what you mean by increase.

9 Q. Was there an increase in advertisement in
10 weekly periodicals subsequent to the removal of
11 advertisement from TV?

12 A. I don't recall if it was characterized as an
13 increase. We were advertising in those periodicals.
14 I don't recall that meant increase or budget levels.

15 Q. It's still true with respect to
16 newspapers?

17 A. Yes.

18 Q. Same is true with respect to outdoor
19 advertising?

20 A. Yes.

21 Q. So your budget stayed about the same with
22 respect to all the other media forms of advertising.
23 Is that correct?

24 MR. SHAPIRO: I'm sorry. I thought he
25 didn't recall?

1 MR. EDELL: No, he didn't say that.

2 A. Have to give me a time period. I'm not quite
3 sure what period you're talking about.

4 Q. 1971, '72.

5 A. Compared to?

6 Q. 1970.

7 A. The dollars increased, yes, in magazines in
8 1972,

9 '71 -- after we went off television, yes.

10 Q. Why was that?

11 A. Well, the money that we were using for
12 television, some of the money went into magazines
13 and other periodicals.

14 Q. Why?

15 A. It was the media form open to us.

16 Q. It was available to you before cigarette
17 advertisements were taken off the air, was it not?

18 A. Yes.

19 Q. Why was there an increase in these
20 periodicals after advertisements were taken off of
21 TV?

22 A. Well, two media forms were denied, radio and
23 television. Some of that money went to magazines
24 and newspapers in that way.

25 Q. Was this just extra money that was

1 hanging around or was there a reason why they took
2 this money and diverted it to other media forms?

3 A. It wasn't extra money. Television reached some
4 people and magazines reached some people. We had to
5 reach people that television was reaching and now
6 denied to us, so we went into some other magazines
7 to reach some of those people.

8 Q. In magazines you had not been advertising
9 before?

10 A. I don't recall whether we added magazines or
11 not from the original schedules or early schedules.

12 Q. Were you aware that the cigarette
13 companies consented to the removal of their
14 advertising from TV?

15 MR. SHAPIRO: Object to the form.

16 Go ahead, you can answer it..

17 A. All I know is that it was a governmental decree
18 or law. I don't know anything else about it.

19 Q. You don't know that they in fact
20 consented to it. Is that correct?

21 A. I don't know.

22 Q. When you came with Lorillard in 1970,
23 were there warnings in the advertisements, health
24 warnings?

25 A. I believe the health warnings started a little

1 bit later.

2 Q. Did you have any discussions concerning
3 the impact of the health warnings --

4 A. No.

5 Q. -- on sales?

6 A. No, sir.

7 Q. As brand manager you had overall
8 responsibility for marketing the cigarette, correct,
9 marketing True cigarettes?

10 A. I had some of the responsibility.

11 Q. It wasn't overall responsibilities?

12 A. There were other people. I had a boss who also
13 had responsibility.

14 Q. But on the day-to-day basis you had
15 responsibility. Isn't that correct?

16 A. I don't want to say I had sole responsibility
17 for the marketing of the product. I did not have --
18 worked on the marketing of the product. I guess I
19 can't characterize it as sole responsibility.

20 Q. On a day-to-day basis am I correct that
21 you had the major responsibility for the marketing
22 of True cigarettes back in 1970?

23 MR. SHAPIRO: Object to the form.

24 You can answer it.

25 A. Would you read that back to me, please?

1 (Read by the reporter.)

2 A. No, sir.

3 | Q. Who did?

4 A. I believe John Bresnahan.

5 Q. When you became aware that a health
6 warning was going to be placed in the advertising,
7 did the thought cross your mind that it might have
8 an impact on sales?

9 A. I don't recall.

10 Q. You didn't think about it one way or the
11 other?

12 A. I don't recall thinking about it.

13 Q. Well, it was a major difference in the
14 advertising, was it not, sir?

15 A. It was to be an element in the advertising.

16 The warning notice had been around on the package.

17 Q. Something that hadn't occurred in the
18 history of cigarettes. Correct? The first time in
19 the history of advertising of cigarettes that you're
20 going to have to put a health warning on it?

21 MR. SHAPIRO: Are you making a speech or
22 asking a question?

23 MR. EDELL: Question.

24 MR. SHAPIRO: Dramatics.

25 MR. EDELL: I'm sorry.

1 A. Yes, I believe so.

2 Q. Was there talk about the necessity of
3 having to put the warning on the advertising, that
4 that hadn't happened for at least 50 years of
5 advertising and all of a sudden you have to put a
6 warning in your advertising?

7 A. I don't recall any conversations.

8 Q. Did you ever hear the term of tonality in
9 terms of advertising?

10 A. I heard it used, yes.

11 Q. What context?

12 A. General statement about a tone of the ad, what
13 the ad looks like.

14 Q. For example, let's talk about Mau-1. In
15 terms of the use of the word tonality, how would it
16 apply to Mau-1?

17 A. I'm not sure that tonality would apply to that
18 ad.

19 Q. So I understand, what type of
20 advertisement would tonality apply to?

21 A. Take it more to mean a tone, the color of the
22 ad overall, overall color.

23 Q. Has to do with the usage of color?

24 A. Primarily, yes.

25 MR. SHAPIRO: That's his understanding.

1 If you have another definition, we'd be happy to
2 hear it.

3 MR. EDELL: He certainly knows more about
4 advertising than I do.

5 MR. SHAPIRO: Not necessarily. I suspect
6 you spend a lot of time with it.

7 Q. Was there any change in sales of True
8 cigarettes after the warning was placed on the
9 advertising?

10 A. I don't recall.

11 Q. That would have been information that you
12 would have had at the time if there was a change.
13 Correct?

14 A. Yes.

15 Q. If there was a dramatic change you would
16 probably recall that. Correct?

17 A. Yes.

18 Q. If sales all of a sudden plummeted, you
19 would have recalled that?

20 A. Yes.

21 Q. Did you formulate an impression at the
22 time as to whether or not the placement of the
23 health warning in the advertisements had any effect
24 on the advertising itself or how it was received by
25 the reader?

1 A. No. I don't recall.

2 Q. Let's talk about the warning itself. For
3 example, take a look at Mau-1. You have it in front
4 of you. Right?

5 A. Yes.

6 Q. Strike that. I'm going to withdraw that
7 line of questioning. We'll get back to it in a
8 second.

9 Are there any studies that tell you
10 approximately how long your average reader spends in
11 reviewing an advertisement?

12 A. I don't recall any studies.

13 Q. Are there recall studies? Ever hear that
14 term, recall studies?

15 A. Yes.

16 Q. Have you ever had any recall studies done
17 for any advertisements done by Lorillard with
18 respect to True cigarettes?

19 A. Well, recall in the term that I refer to it is
20 part of a portfolio study, a question within the
21 portfolio study.

22 Q. What is the reason why you would use
23 recall as part of the portfolio study?

24 A. Shows someone an ad and then ask them if they
25 recall the name, if they recall the ad and if they

1 recall the name of the product in the ad.

2 Q. That's it?

3 A. Yes.

4 Q. Don't ask them anything else about the ad
5 in terms of what they recall?

6 A. Yes.

7 Q. What else do you ask them?

8 A. Depends on the ad. If they saw a person, what
9 they read, that's it.

10 Q. Who prepares those studies for Lorillard
11 with respect to True cigarettes? Is that done
12 inhouse?

13 A. No.

14 Q. Who does it?

15 A. We use outside research firms.

16 Q. Do you know the names of any of the
17 research firms that you use?

18 A. No, I don't.

19 Q. Who would know that information?

20 A. Marketing and research director would know.

21 Q. Mr. Jones?

22 A. Yes.

23 Q. Dr. Jones or Mr. Jones?

24 A. Dr. Jones.

25 Q. Have you ever seen the results of such

1 studies?

2 A. Yes.

3 Q. Do you recall such studies with respect
4 to True cigarettes?

5 A. Yes.

6 Q. Tell us about the ones that you remember
7 with respect to True cigarettes.

8 A. Well, I recall the one I mentioned earlier, You
9 Found It campaign.

10 Q. What did the recall aspect of that study
11 show?

12 A. Well, it showed that people saw there are some
13 dots, colored dots in the ad, people saw that. They
14 saw the name of the cigarette, and that's what they
15 saw.

16 Q. Did they tell you whether or not they
17 recall seeing a warning, health warning?

18 A. We did not ask them whether they saw a health
19 warning or not.

20 Q. Why is that?

21 A. It's in every ad and we do not ask them that.
22 Research ads find something different in the copy.

23 Q. The name of True cigarettes appears in
24 every ad?

25 A. Yes.

1 Q. Still ask them whether or not they recall
2 seeing True cigarette. Correct?

3 A. Yes.

4 Q. But you don't ask them whether or not
5 they recall seeing the health warning in the
6 advertisement. Correct?

7 A. That's right.

8 Q. The reason is that the health warning has
9 nothing to do with the marketing of your cigarettes.
10 Right?

11 A. It's part of the ad.

12 Q. But it doesn't have anything to do with
13 the marketing? You have to put that in and you're
14 not going to change that one way or the other.
15 Right? The government tells you to put that in?

16 A. That's right.

17 Q. You've never done any studies to see
18 where the health warning would be the most effective
19 in the advertisement. Right?

20 A. Most effective? It's in the ad in a clear and
21 conspicuous place, all ads are according to the
22 guideline and we do not ask people if they saw the
23 warning notice.

24 Q. So you don't know whether the reader sees
25 it or not. Correct?

1 A. From the research, no.

2 Q. I'm sorry?

3 A. From the research, no, I don't.

4 Q. Because you're not interested in that.

5 Correct?

6 A. I believe they see it. It's part of the ad.

7 They see the ad, they have to see the warning.

8 Q. Why?

9 A. It's in the advertisement, clear and
10 conspicuous.

11 Q. You mean to tell me every person that
12 sees any one of your advertisements reads the entire
13 advertisement? Is that your testimony, sir?

14 A. No, sir.

15 Q. In fact, most people who look at ads
16 don't read the whole advertisement. Isn't that
17 correct?

18 A. I don't know.

19 Q. There aren't any studies done on that?

20 A. No.

21 Q. None that you're aware of?

22 A. Not that I'm aware of.

23 Q. Do you ask the people who review the
24 advertisement as to what they recall with respect to
25 the tar and nicotine content?

1 A. We ask them a low tar and nicotine question,
2 yes.

3 Q. What do you ask them?

4 A. If they -- sometimes we ask if this is a low
5 tar and nicotine cigarette.

6 Q. You don't ask them specifically how many
7 milligrams of tar and nicotine, is that correct,
8 they recall being in the ad?

9 A. We might; but sometimes we do, sometimes we
10 don't.

11 Q. What does that depend upon?

12 A. Specific ads.

13 Q. Whether it's the focal point of the ad,
14 right, the actual percentage?

15 A. I can't describe actually when we do it and
16 don't do it without a specific ad.

17 Q. Okay. Let's see if we can help you out.
18 then.

19 A. Okay.

20 Q. Take a look at Mau-1. You certainly
21 would not have included the question concerning the
22 amount of tar and nicotine in a recall study of this
23 advertisement. Right?

24 A. I don't know.

25 Q. Would you want to do that?

1 A. I don't know whether we wanted to or not.

2 Q. How would you decide?

3 A. We might or might not.

4 Q. What facts do you make that decision on?

5 A. I don't know there are any facts we made the
6 decision on. It's a judgment call at the moment.

7 Q. What do you premise that judgment call at
8 the moment on?

9 A. Can't describe that for you. I don't know how
10 to answer that.

11 Q. You're the only one that answers it. I
12 don't want to be flip and say what you eat in the
13 morning, but there's got to be something more than
14 is it a sunny day or not, or am I wrong?

15 A. Ask me the question again.

16 Q. I'll rephrase it.

17 All I want to know is what you base the
18 judgment on whether or not in the recall study
19 there's a question as to whether the reader recalls
20 this specific percentage of tar and nicotine or how
21 many milligrams of tar and nicotine.

22 A. I will try to -- if possibly we have the number,
23 the exact number within the copy of the ad, we might
24 ask if they recall the specific number.

25 Q. When you say the copy of the ad what do

1 you mean?

2 A. If it's in the copy like here five milligrams
3 of tar or 11 milligrams of tar.

4 Q. When you say like here --

5 A. If we would have said low at 11 milligrams or
6 whatever it is, of 11 milligrams my belief, we might
7 have asked it on that occasion.

8 Q. So if it's included in the advertisement
9 you would ask the question. Is that right?

10 A. Yes. It would be the premise.

11 Q. Have any of the recall studies concluded
12 anything with respect to the size of the print of
13 the information and the ability of the viewer to
14 recall that information?

15 MR. SHAPIRO: On any studies? On what,
16 True cigarettes?

17 MR. EDELL: Recall studies.

18 MR. SHAPIRO: On True cigarettes?

19 MR. EDELL: I think on any cigarette.

20 MR. SHAPIRO: Okay.

21 A. Would you repeat that question?

22 MR. EDELL: I don't know if I could. Ask
23 him.

24 (Read by the reporter.)

25 A. No, sir.

1 Q. Do you have an opinion as to whether or
2 not there is a relationship between the size of the
3 print and the ability of the viewer to recall the
4 information which is contained in a particular size
5 of the print?

6 A. My belief, my understanding is the totality of
7 the piece of advertising.

8 Q. So the size of the print has very little
9 to do with it. Is that correct?

10 MR. SHAPIRO: Object to the form.

11 A. The total ad is the key.

12 Q. Why is that?

13 A. It's what the people see.

14 Q. So it's how everything interrelates with
15 everything else?

16 A. Yes.

17 Q. The image, the person, the placement of
18 the person, the placement of the packages of the
19 cigarettes as well as the actual print itself?

20 A. The layout of the advertisement, that's
21 important.

22 Q. So you couldn't just pick out the printed
23 type and say that because of its size it would be
24 more or less effective. Is that correct?

25 A. That's correct.

1 Q. Why is that?

2 A. I don't know.

3 Q. Just the way it is?

4 A. Just the way it is.

5 Q. You've been involved in the layout or
6 reviewing the layout of a number of ads with respect
7 to True cigarettes. Correct?

8 A. Yes.

9 Q. How many, just a guesstimate, and I won't
10 hold you to this, approximately how many
11 advertisements have you ever reviewed?

12 I want to get some field. Have you seen
13 50 or 150 or 500,000? Just so I have some idea of
14 what your experience has been.

15 A. Could I -- the number of ads that I have seen?

16 Q. Not seen, period. Just the
17 advertisements that you've seen in terms of your
18 responsibilities at Lorillard.

19 MR. SHAPIRO: True ads?

20 MR. EDELL: I don't think it really
21 matters.

22 MR. SHAPIRO: Okay.

23 A. Tell you how I'm going to get to the number.

24 Q. Okay, fine.

25 A. We may run eight to ten or six to ten ads on

1 True a year, different ads and you saw four in this
2 series. I've been with Lorillard 14 years, so
3 whatever, ten times 100 or ten times 14 is, 140.
4 That's ads that we've run. I guess I hope that's
5 responsive to your question.

6 Q. When you take a look at the ad, do you
7 look at it with a view of seeing whether or not it's
8 going to be effective?

9 A. Well, I look first to see if it's going to say
10 True.

11 Q. Whether or not it's going to carry
12 through the advertising campaign then in effect?

13 A. Yes.

14 Q. How do you make that decision?

15 A. Primarily judgment decision.

16 Q. Let's get back to the facts upon which
17 you make that judgment.

18 A. Look at the ad, see if it's, I think within the
19 framework of the campaign or the first ad that maybe
20 set the campaign and if it looks as it is then, yes.

21 Q. Is it fair to say you look at the ad to
22 see whether or not the reader from reviewing it will
23 gain the impression or the image that True is trying
24 to establish at a given point in time?

25 A. Yes.

1 Q. We went through this exercise I think
2 with Mr. Ave and we'll try it again with you.

3 In taking a look at Mau-1 for
4 Identification, is there a particular item or area
5 or figure or print that you would expect a reader's
6 eye to focus on first in the advertisement?

7 A. No.

8 Q. There's not a natural flow to the
9 advertisement. Is that correct?

10 A. No.

11 Q. Is there an intended flow? Is there some
12 purpose for putting the golfer up in the right-hand
13 or the upper right-hand portion of the advertisement
14 and the True cigarettes below him and the text to
15 the left of him?

16 A. No. It's just a layout and looks good, looks
17 pleasing, and that's what it is.

18 Q. That's as scientific as it gets. Is that
19 right?

20 A. That's right.

21 Q. Is Mau-1 consistent with the image that
22 True tries to project?

23 A. Low tar and nicotine cigarette, yes.

24 Q. Nothing about good taste in there, though.
25 Right?

1 A. I think it's implied in that.

2 Q. How?

3 A. Smokes true. Smoke True and likes the taste of
4 it.

5 Q. Does it say, like the taste?

6 A. No. I said it's implied I smoke True, like the
7 taste.

8 Q. So you don't really have to say it in the
9 ad for the ad to imply it. Is that correct?

10 A. That's correct.

11 Q. Does placement of information have
12 anything to do with the effectiveness of the message?
13 That's a bad question. Let me try to rephrase it.

14 If I wanted the reader of the
15 advertisement to come away with the impression that
16 the message in this ad was that cigarette smoking
17 was harmful to you, where would you want to put that
18 health warning?

19 MR. SHAPIRO: I object. It's irrelevant.
20 The government dictates the guideline for where the
21 health warning goes.

22 MR. EDELL: They set a minimum.

23 MR. SHAPIRO: They set standards.

24 MR. EDELL: A minimum.

25 Q. Sir?

1 A. Would you read the question back?

2 (Read by the reporter.)

3 MR. NAAR: I object to the form of the
4 question.

5 MR. SHAPIRO: I thought we already had an
6 objection to the form.

7 A. We have guidelines on the placement of the
8 warning.

9 Q. Mr. Shapiro told us that. That wasn't my
10 question.

11 Is it your impression, sir, that you
12 can't make the warning any bigger?

13 A. I'd have to ask the legal department.

14 Q. No one ever told you you couldn't make it
15 any bigger?

16 A. I have to ask legally.

17 Q. You have to ask legal whether they ever
18 told you that?

19 A. They have not told me that, no, sir.

20 Q. Did they ever tell you that you have to
21 stick it in the left-hand corner?

22 A. They review all of our advertising.

23 Q. I understand that.

24 A. And approve it.

25 Q. I understand that.

1 The question is: Did they ever tell you
2 that you have to put the warning in the left hand
3 bottom corner?

4 A. No.

5 Q. Ever tell you you couldn't put it in the
6 middle of the advertisement?

7 A. No, sir, but --

8 Q. Go ahead.

9 A. The guidelines, if talking about the middle of
10 this ad, the guidelines state that you cannot put
11 the warning -- I don't remember the exact language --
12 but it's close to, next to, adjacent to live matter.
13 In this particular ad, could not put it there
14 according to the guidelines. It's to be clear and
15 conspicuous.

16 Q. And you submit it to legal counsel to
17 make sure that it is clear and conspicuous. Right?

18 A. Yes. They're one of the -- yes.

19 Q. You submit it to anybody else to make
20 sure it's clear and conspicuous?

21 A. Comes through me and I make sure it's clear and
22 conspicuous and legal department also.

23 Q. Is there anyplace in that advertisement
24 other than the -- when I say that advertisement,
25 Mau-l -- where the warning would be more clear and

1 more conspicuous than where it's placed?

2 MR. SHAPIRO: And not near live matter?

3 A. I think that's very clear and conspicuous right
4 under the headline under the package, very clear and
5 conspicuous.

6 Q. If the size of the print was larger do
7 you think it would be more clear and more
8 conspicuous?

9 A. I don't know.

10 Q. Well, is there a reason why you use the
11 size print that you do above where it says, "I'd
12 heard enough to make me decide one of two things:
13 quit or smoke True"? That's in a different size
14 print than the health warning, isn't it, sir?

15 A. The health warning size and print is in the
16 guidelines and that's the size that we have to use
17 and do use.

18 Q. The question is, though, sir: Is the
19 statement that I just read in size print different
20 than the print used in the health warning?

21 A. These two?

22 Q. Yes.

23 A. Yes.

24 MR. SHAPIRO: We needed a deposition for
25 that?

1 MR. EDELL: No.

2 Q. Is there a reason why you use larger
3 print? Why didn't you use the same size print that
4 you used for the health warning for the rest of the
5 text of the advertisement?

6 A. Health warning is dictated to us as within the
7 guidelines and the rest of the ad is a layout that
8 we've determined that we're going to use also.

9 Q. But you determined not to use the size
10 print that appears in the health warning, right, for
11 the rest of the ad?

12 A. That's right.

13 Q. Is there a reason for that?

14 A. We do the ads to talk about True cigarettes
15 also and put that in. I don't think the ad looks
16 good all the same type.

17 Q. More effective you use -- the size
18 present you think is most appropriate. Correct?

19 A. Yes.

20 Q. And if you use the same size print as the
21 health warning for the other printed matter in Mau-1,
22 the ad would probably be less effective wouldn't it?

23 A. I don't know that.

24 Q. You wouldn't have a professional opinion
25 one way or the other. Is that right?

1 A. I don't know that.

2 Q. Do you have an opinion, sir?

3 A. I don't know if it would be more effective or
4 not. I think it's effective the way it is.

5 Q. Let's say you were presented with this
6 Mau-1 for Identification and instead of being in the
7 print that it appears in the advertisement, the
8 statement that I read previously was in the same
9 size print as health warning. Would you think that
10 would be an effective ad?

11 A. I have to hear the question again.

12 (Read by the reporter.)

13 MR. NAAR: I object to the form of the
14 question.

15 A. Long question. Read it again.

16 (Read by the reporter.)

17 A. It might be. I don't know.

18 Q. Would you okay the ad to go into print?

19 MR. NAAR: Object to the form of the
20 question.

21 A. I would show it to the legal department and see
22 if they would approve it.

23 Q. I'm not talking about the legal aspects,
24 but the effect from an advertising prospective.

25 A. Using the same type and type face within the ad?

1 Would have to go legally. I don't think so. I
2 think it would be too similar to the health warning.

3 Q. So if the full text of the ad on the
4 printed material in the ads were the same size as
5 the health warning, you wouldn't be permitted to
6 print that ad?

7 A. I said I would have to go and check.

8 Q. But you don't think you would. Is that
9 correct?

10 A. It's possible. I would be unsure enough I
11 would go to legal department and ask them.

12 MR. EDELL: If you want a reasonable
13 place to stop, this is fine with me.

14 (Luncheon recess.)

1 A F T E R N O O N S E S S I O N

2 MR. EDELL: Mark this, please.

3 (Mau-4 marked for Identification.)

4 Q. You told us, and I really don't want to
5 go over it again, but I'll ask you two questions
6 upon it. You told us about the one portfolio study
7 that you remember 1982, 1983?

8 A. Yes.

9 Q. That was on a particular advertising
10 theme. Is that right?

11 A. Yes.

12 Q. How do you describe that advertising
13 theme?

14 A. Well, it was called You Found It.

15 Q. Now that I have that as a frame of
16 reference, how do you characterize the advertising
17 theme as depicted in Mau-1, two and three if they
18 are all of the same advertising theme?

19 A. I smoke true.

20 Q. That's the theme?

21 A. That's the theme.

22 Q. Let's take a look at Mau-4, what's the
23 advertising theme in Mau-4?

24 A. Well, it's a switching theme.

25 Q. Switching theme. Okay.

1 MR. EDELL: Let's mark this one as Mau-5.

2 (Mau-5 marked for Identification.)

3 A. True is lower in tar and nicotine than 99
4 percent of all other cigarettes sold.

5 MR. EDELL: Mark this.

6 (Mau-6 marked for Identification.)

7 Q. What's the advertising theme as to Mau-6?

8 A. 99 percent.

9 Q. Again?

10 A. Yes.

11 MR. EDELL: Mark this as Mau-7.

12 (Mau-7 marked for Identification.)

13 Q. What is the advertising theme in Mau-7?

14 A. Unexpected taste.

15 Q. What, if any, of these themes that we've
16 described here today have been the most successful?

17 MR. SHAPIRO: Object to the form.

18 Q. If you know.

19 MR. EDELL: What's wrong with the form?

20 MR. SHAPIRO: Success can be measured in
21 I guess all sorts of ways.

22 MR. EDELL: Okay.

23 A. I don't know. I couldn't characterize that for
24 you.

25 Q. Why is that? You just don't have that

1 information available?

2 A. Yes, and I wouldn't really know how to
3 characterize it.

4 Q. What do you mean?

5 A. How to judge the success. I don't have the
6 sales information for one thing, and what each of
7 these was designed to do and if it did what it was
8 designed to do.

9 Q. How do you determine whether or not it
10 did what it was designed to do other than sales?

11 A. Well, this one talks about taste.

12 Q. Referring to Mau-7?

13 A. Unexpected taste, yeah. Possibly in an
14 awareness study or tracking study, see if taste
15 mentions come up more on True than it might have
16 before.

17 Q. The same would hold true with the other
18 themes dealing with other subjects other than taste.
19 Right?

20 A. Well, I can't speak for all of them, but there
21 may be, yes.

22 Q. Let's take a look at Mau-6 for
23 identification. What is the image that's being
24 projected through this advertisement?

25 A. As I said, 99 percent, True is lower in tar and

1 nicotine than all the other cigarettes sold.

2 Q. Was there a purpose for putting the
3 drawing of the sophisticated filter in the
4 advertisement?

5 A. I don't really know, but it's just because it's
6 on the package.

7 Q. That's the only reason it's on the
8 advertisement?

9 A. I believe so.

10 Q. Is there a reason why it's on the package,
11 a picture of the sophisticated filter?

12 MR. SHAPIRO: Object to the form
13 sophisticated, but that's okay.

14 Q. Would you describe the True filter as a
15 sophisticated filter insofar as cigarette filters
16 are concerned?

17 A. I don't think I described it as sophisticated.

18 Q. How would you?

19 A. Different.

20 Q. More component parts?

21 MR. SHAPIRO: If you know.

22 A. I don't know.

23 Q. Obviously, if you don't know, that's --

24 MR. EDELL: That's telegraphing the
25 answer.

1 MR. SHAPIRO: I apologize. I don't want
2 him to be guessing on components. If he's
3 knowledgeable in components of the filter, fine.

4 Q. The reason for having the filter pictured
5 in the advertisement and on the packages wouldn't
6 have anything to do with trying to convey to the
7 user how sophisticated and efficient the filter is?

8 A. I think it's just to point out the difference.

9 Q. For what purpose?

10 A. Just that it's different. This little mouth
11 piece is different than other cigarettes.

12 Q. What effect does that have on the
13 consumer just because it's different?

14 A. Just different for True.

15 Q. You mean if you had one color on the
16 filter as opposed to another color, that would be
17 something different also. Right?

18 A. It would be different. I don't know what the
19 consumer would think.

20 Q. Isn't the filter one of the major focuses
21 of the advertising for True cigarettes? There's a
22 picture of the filter on the back and front of the
23 package. Isn't that correct?

24 A. Yes.

25 Q. How many other cigarettes do you

1 manufacture at Lorillard that have pictures of the
2 filter?

3 A. That's the only one.

4 Q. Why?

5 A. It's always been there.

6 Q. Much different filter than the others?

7 A. It's different.

8 Q. What respect?

9 A. Mouth piece.

10 Q. Anything else?

11 A. I don't know specifically, don't know the
12 construction of the other filters.

13 Q. But's it's your testimony it's not
14 packaged to try to convey to the consumer how
15 sophisticated and efficient the filter is in True
16 cigarettes. Is that correct?

17 A. Show its difference, yes, the difference.

18 Q. In terms of what?

19 A. That it has a mouth piece and the triple system,
20 what it says on the back of the pack.

21 Q. What does that try to convey, the fact it's
22 different?

23 A. Yes.

24 Q. Nothing to do with how effective the
25 filter is. Is that correct?

1 A. That's correct.

2 MR. SHAPIRO: If you guys keep going, I
3 can't get an objection to form. I wish you'd wait
4 for me. I object to the form of the question.

5 Reducing tar and nicotine?

6 MR. EDELL: Yes.

7 MR. SHAPIRO: That wasn't clear from the
8 question.

9 MR. EDELL: Sorry. Let me ask it again.

10 MR. SHAPIRO: Yes.

11 Q. Is the purpose of the filter being
12 depicted on the package of cigarettes to convey to
13 the prospective consumer how efficient the filter is
14 in reducing tar and nicotine?

15 A. I think that's -- yes, that's one of the
16 reasons, yes. It says reduction of tar and nicotine
17 reduction system.

18 Q. Why is that important?

19 A. It's a piece of information about True for the
20 consumer to know about.

21 Q. You don't tell them all the information
22 you have about True on the back of packages of True
23 cigarettes? You don't tell them where you purchased
24 the leaves?

25 A. No, sir.

1 Q. Don't tell them about any other
2 additional ingredients contained other than tobacco,
3 do you?

4 A. No, sir.

5 Q. There's a reason why you convey that
6 information to them. Correct?

7 A. Yes, sir.

8 Q. What is the reason?

9 A. True is a low tar and nicotine cigarettes.

10 Q. This goes along with the trend in the
11 market for people to be concerned about their health
12 and to move to low tar and nicotine cigarette.

13 Right?

14 A. Yes, sir.

15 Q. That someone is concerned about their
16 health would look at that drawing of the filter and
17 would walk away from that, from looking at that
18 picture, with the idea that this was a filter that
19 would be consistent with this concern for their
20 health. Isn't that correct?

21 A. That it would -- one of the things that helps
22 make low tar and nicotine cigarette, yes.

23 Q. Something that they're concerned with?

24 A. Yes, sir.

25 Q. That's what you're trying to convey by

1 depicting that on the packages. Isn't that right?

2 A. It's trying to give them an idea of what this
3 filter is and that it helps reduce tar and nicotine
4 in True.

5 Q. But they don't understand the
6 significance of the various parts of the filter, do
7 they?

8 A. I don't know.

9 Q. You don't and you've been working for
10 Lorillard how long now?

11 A. 14 years.

12 Q. So would you expect your average consumer
13 to understand the significance of the composition of
14 the filter?

15 A. I guess they would not.

16 Q. Now, we talked about these advertisements
17 and what message was intended. Have you ever seen
18 any advertisement that has produced an image or
19 conveyed a message which in fact was not the message
20 intended to be conveyed?

21 A. No, not that I recall.

22 Q. Never remember that happening?

23 A. No, sir.

24 Q. So, in other words, if somebody picked up
25 Mau-2 for instance and read that ad and came to the

1 conclusion that to me this means, "well, I got one
2 of two options. I quit or smoke True cigarettes.
3 Otherwise, I'm going to get some type of disease as
4 a result of my smoking," you wouldn't ever expect
5 for that to happen and you would be very surprised
6 for that to happen. Isn't that correct?

7 A. I would think that would be unreasonable.

8 Q. Unreasonable interpretation of this
9 advertisement. Is that correct?

10 A. I think so.

11 Q. Have you ever been surprised by some of
12 the results from recall studies as to what people
13 recalled about a particular ad?

14 A. No, I've never been totally surprised.

15 Q. Have you ever been surprised, not totally?

16 A. No, I've not been surprised.

17 Q. Results have always been consistent with
18 the message you've tried to convey. Is that correct?

19 A. No, sir.

20 Q. They haven't? Sometimes you don't get
21 the message across. Is that correct?

22 A. That's correct.

23 Q. Some time you get a message across that's
24 not what you intended, you say something and it's
25 interpreted in a different fashion?

1 A. No.

2 Q. That never happens?

3 A. Not that I recall, no, sir.

4 Q. All you remember is that you try to say
5 something and people don't get that out of the add?

6 A. May not get to the degree we might want.

7 Q. Are you aware the Federal Trade
8 Commission on an annual basis reports to Congress
9 concerning advertising insofar as it impacts on the
10 warnings, the health warnings?

11 A. No, I'm not familiar with that.

12 Q. Never heard that that's its practice?

13 A. No, sir, I don't recall.

14 Q. Were you around when the Federal Trade
15 Commission subpoenaed the files of Lorillard?

16 A. Yes, sir.

17 Q. With respect to advertising?

18 A. Yes, sir.

19 Q. Did you have any idea why they were doing
20 that?

21 A. No, sir.

22 Q. You never had any discussions with
23 anybody concerning that?

24 A. No, sir, not that I recall.

25 Q. Do you know whether or not files were

1 turned over to the Federal Trade Commission?

2 A. Yes, they were.

3 Q. How did you find that out?

4 A. People went through my files and copied or took
5 documents.

6 Q. You never asked anybody why?

7 A. No, sir.

8 Q. Has Lorillard through its True
9 advertisements ever attempted to reduce the
10 consumers' concerns about the health hazards of
11 cigarettes?

12 A. No, sir, we do not talk about the health
13 hazards of cigarettes.

14 Q. That isn't what I asked.

15 A. I'm sorry.

16 MR. EDELL: Ask the question again.

17 (Read by the reporter.)

18 Q. The question is not whether or not you
19 talk about it, but whether or not your advertising
20 either directly or indirectly attempts to reduce the
21 anxiety of people who smoke cigarettes concerning
22 the issue of cigarette smoking and health.

23 A. No, sir.

24 Q. That would be if somebody looked at one
25 of your advertisements and walked away feeling

1 better about smoking True cigarettes, insofar as the
2 potential health hazards are concerned, that would
3 be something you would not expect. Is that correct?

4 MR. SHAPIRO: I object to the form.

5 MR. EDELL: I'll try to rephrase it.

6 Q. Would it be unreasonable for someone to
7 look at Mau-2 for Identification and believe that by
8 smoking True cigarettes they are reducing the
9 potential risk of developing some type of lung
10 disease from smoking cigarettes?

11 MR. SHAPIRO: Object to the form.

12 MR. EDELL: Okay. Fine.

13 Q. You can answer the question.

14 A. Would you read the question back, please?

15 (Read by the reporter.)

16 A. I do not think that advertising says anything
17 about any representation of health which I
18 understand it to be.

19 MR. EDELL: Repeat the answer.

20 (Read by the reporter.)

21 Q. So you would be surprised if somebody
22 interpreted the advertisement Mau-2 for
23 Identification in the fashion that I've described,
24 that being, that if they smoked True cigarettes
25 they're going to reduce the potential health hazard.

1 of their smoking cigarettes. Is that correct?

2 MR. SHAPIRO: Object to form.

3 Q. Is that correct, sir?

4 A. That advertising does not say anything about
5 the -- makes no health representation whatsoever.

6 Q. That wasn't the question.

7 Repeat the question, please.

8 (Read by the reporter.)

9 MR. SHAPIRO: You have my objection to

10 the form.

11 A. I believe I answered the question.

12 MR. SHAPIRO: He did.

13 Q. Would you be surprised if somebody
14 interpreted it that way, not what you intended to do?

15 A. Yes, I would be surprised if somebody
16 interpreted it that way.

17 Q. Unreasonable interpretation of this
18 advertisement, Mau-2 for Identification?

19 A. Yes, sir.

20 Q. The same would be true with these other
21 advertisements here. Is that correct?

22 A. Yes, sir.

23 MR. SHAPIRO: Can we just -- never mind.
24 The form of these questions trouble me.

25 Q. Mau-4 for Identification, you reviewed

1 this before this deposition. Right?

2 A. Yes.

3 Q. This was part of the exhibits to Mr. Ave's
4 deposition. Right?

5 A. That's correct.

6 Q. Do you recall my asking Mr. Ave what was
7 meant by the term or the words "It's gentle on your
8 mind"?

9 A. Yes, I do.

10 Q. I'll ask you the same question then. Now
11 that you've already seen it once, you can hear it
12 again. What is the message that's being conveyed to
13 the reader by the use of the term or the use of the
14 language, "It's gentle on your mind"?

15 A. Well, I have to go back to the whole sentence.

16 Q. All right. Let's start all over again.

17 What does Lorillard try to convey to the
18 reader by using the following sentence: "True is not
19 only gentle on your taste, it's gentle on your
20 mind."?

21 A. That ad is in general switching. It says that
22 True is a good tasting, gentle is the description,
23 characterization of the taste, the taste of the
24 cigarette. Gentle on your mind means that you're in
25 the marketplace and you have looked at other brands.

1 other low tar and nicotine brands and if you're
2 thinking about switching, come switch to True
3 because it's good tasting, low tar and nicotine
4 cigarette, and you can be satisfied of the cigarette
5 because it's good tasting, low tar cigarette, you
6 won't have to look around any more.

7 Q. Don't worry about considering another
8 cigarette, is that what it is?

9 A. It's a cigarette you can be satisfied with and
10 stay with. For what purpose?

11 A. Taste and low tar and nicotine.

12 Q. Do we also consider the language farther
13 up in this advertisement when trying to evaluate the
14 use of that sentence, the impact of that sentence,
15 we've described, "True is not only gentle on your
16 taste, it's gentle on your mind," do we look at that
17 sentence in the context of the entire advertisement?

18 A. It's part of the advertisement.

19 Q. Okay. Up on top there's language that
20 says, "You've changed. Your life style has changed.
21 And so has your attitude toward smoking. You've
22 decided you should change to a low tar and nicotine
23 cigarette." Then there's --

24 A. "Brings people to True."

25 Q. Period, close quote.

1 When you're talking about a lifestyle
2 change, you're talking about more concern for their
3 health. Right?

4 A. Talking about lifestyle in general. People do
5 different things different times in their lifestyle
6 and maybe they drink diet Colas. I don't know
7 examples, but, yes, lifestyle change.

8 Q. What lifestyle change?

9 A. Maybe little older you do something different,
10 you drink soft drink, you eat Granola cereal.
11 Things change.

12 Q. Why, though? What relationship does that
13 have to do with True cigarettes?

14 A. I think it's acknowledging that people's
15 lifestyles, their tastes change and it's relating to
16 them.

17 Q. Okay. What is the use of the sentence
18 "And so has your attitude towards smoking"? It
19 means it's changed, we know that.

20 A. It reflects, again, the process people have
21 gone through, information they've read about health
22 and cigarettes and this attitude change may be
23 searching for another low tar and nicotine cigarette
24 and here is a good tasting one.

25 Q. If you're concerned about your health and

1 you want to smoke a low tar and nicotine cigarette
2 because of that concern, smoke True. Right?

3 A. Some people are health concerned and given the
4 option as low tar, nicotine cigarette to try True.

5 Q. That's the person you're projecting this
6 advertisement to, the person concerned about their
7 health and, therefore, they want to switch to low
8 tar and nicotine cigarettes. Right?

9 A. Someone in the market to switch to low tar,
10 nicotine may be health concerned.

11 Q. That's what you already told us, the
12 profile of the person you were advertising to?

13 A. That's one of the profiles of it.

14 Q. If they switched to True cigarettes, they
15 can relax. Is that right?

16 A. They can switch to True, find a good tasting,
17 low tar, nicotine cigarette and they don't have to
18 look around for another low tar and nicotine
19 cigarette because they will be satisfied with this
20 brand.

21 Q. Nothing to do with satisfying their
22 desire to reduce the potential health hazard of
23 cigarette smoking. Is that correct?

24 A. Does not make any representation.

25 Q. I didn't ask you that.

1 A. It does not, no, sir.

2 Q. You told us you started work in 1960.

3 You were 26 years old at the time. Correct?

4 A. 25 or 26.

5 Q. What did you do before that?

6 A. I was in the United States Army.

7 Q. For how many years?

8 A. Two.

9 : Honorable discharge?

10 A. Yes, sir.

11 Q. What did you do in the Army?

12 A. I worked in a public information office as a
13 clerk/typist in Colorado Springs.

14 Q. When did you start smoking?

15 A. 19-somewhere, 1951, '52. Junior, sophomore --
16 junior in high school.

17 Q. You were 17 or 18 years old?

18 A. Yes.

19 Q. Did your parents smoke?

20 A. Yes, they did.

21 Q. They still smoke?

22 A. My father does, my mother is deceased.

23 Q. Did they discuss with you potential
24 health hazard of cigarette smoking when you started?

25 A. I don't recall.

1 Q. Do you know if some people thought there
2 were?

3 A. Yes, I believe so. I remember conversations
4 about it, yes, sir.

5 Q. Conversations with whom?

6 A. Well, just recall I think coach saying, advise
7 me not to smoke. I remember the term coffin nails
8 and another one I guess kids ask you for cigarettes
9 say something about cancer sticks, so that
10 impression I have I guess.

11 Q. But you smoked anyway. Right?

12 A. Yes, sir.

13 Q. Why?

14 A. I enjoyed it.

15 Q. You didn't know you enjoyed it until you
16 tried one. Right?

17 A. I don't recall why I started.

18 Q. Once you started, then you enjoyed it,
19 and continue to smoke. Right?

20 A. That's right.

21 Q. Despite the fact people refer to it as a
22 cancer stick. Right?

23 A. Yes.

24 Q. Despite the fact the coach told you it
25 wasn't good, you continued to smoke?

1 A. Yes.

2 Q. That's because you enjoyed it?

3 A. Yes, sir.

4 Q. It wasn't because you didn't believe that
5 you were going to hurt yourself smoking. Right?

6 A. I don't know what I believed at the time.

7 Q. You didn't have any discussions with your
8 parents concerning smoking?

9 A. Not that I recall.

10 Q. You've continued to smoke on a consistent
11 basis to the present?

12 A. I quit one time in the early '60s.

13 Q. Why?

14 A. I was poor.

15 Q. Couldn't afford cigarettes?

16 A. That's right.

17 Q. This is when you were working with McCann
18 Erickson?

19 A. Yes.

20 Q. Then when you worked with American Sugar,
21 did it continue up to then?

22 A. I can't recall the exact dates, but I suspect
23 when I went to American Sugar I resumed.

24 Q. How much were cigarettes back in 1960, do
25 you remember?

1 A. I don't recall.

2 Q. Then you continued to smoke again and
3 you've been smoking ever since. Right?

4 A. Yes.

5 Q. You can afford cigarettes now?

6 A. Yes.

7 Q. They give them to you for nothing?

8 A. Yes.

9 Q. The price is right.

10 Do you presently believe cigarette
11 smoking causes lung cancer?

12 MR. SHAPIRO: I object. I don't think
13 his personal beliefs are relevant to anything. I
14 allowed that with others, but in his case he has no
15 involvement in the company on those issues. As you
16 pointed out in the reference in one of your
17 questions, his own beliefs are totally irrelevant.

18 MR. EDELL: He's an officer of the
19 company.

20 MR. SHAPIRO: He's --

21 MR. EDELL: I'm sorry.

22 MR. SHAPIRO: He is an officer, but he is
23 not involved in any way, shape or form with the
24 formation of company policy on smoking and health
25 and doesn't speak for the company on that question.

1 So in that instance I think his own thoughts are
2 irrelevant, totally irrelevant.

3 Q. What's your position with the company?

4 A. I'm vice-president of advertising and brand
5 management.

6 Q. How long have you been an officer of the
7 corporation?

8 A. I believe it was 1979.

9 Q. 1982 did you believe cigarette smoking
10 caused lung cancer?

11 MR. SHAPIRO: Object and direct him not
12 to answer. I don't want to whet your appetite, but
13 this is irrelevant on policy making. The question
14 might be appropriate -- it is irrelevant and not
15 likely to lead to discovery of anything admissible
16 for people who are not in any way, shape or form
17 involved in policy making for Lorillard, smoking and
18 health.

19 MR. EDELL: I think it's perfectly
20 appropriate for another reason aside from the fact
21 he is an officer.

22 MR. SHAPIRO: Tell me the reason.

23 MR. EDELL: You will take a position one
24 way or the other that people and specifically the
25 plaintiffs in a particular case believe or don't

1 believe or should believe or shouldn't believe that
2 cigarette smoking causes lung cancer, that there is
3 enough information out there where the plaintiff was
4 put on notice that cigarette smoking caused lung
5 cancer and we will then be arguing to the jury what
6 is reasonable and what isn't reasonable.

7 MR. SHAPIRO: It's only in regard to that
8 individual, that plaintiff, based on what they said
9 and I don't think that it would be relevant to have
10 the thoughts of everybody else. I mean, if it's
11 relevant for someone like Mr. Mau, it's relevant for
12 someone on the street. I think the question, the
13 reasonableness be directed toward the individual in
14 question and their circumstance, and that would not
15 be relevant.

16 MR. EDELL: He's an officer of the
17 corporation. Therefore, he's a little different
18 than the person on the street.

19 MR. SHAPIRO: No. He's not an officer
20 that is involved in policy formation on the issue of
21 smoking and health. I think you almost implicitly
22 recognized that earlier in one of your comments on
23 the record. He is not.

24 MR. EDELL: I never said that. I don't
25 want my statements to be interpreted that way.

1 MR. SHAPIRO: You said he doesn't have
2 expertise in smoking and health.

3 MR. EDELL: That's something else.

4 MR. SHAPIRO: Whatever you want. He is
5 not involved, he is not someone authorized to speak
6 on that subject and, therefore, as I say, I don't
7 think that his personal beliefs, although I don't
8 want to whet your appetite, of what he thinks or
9 doesn't think are relevant. I told you I thought
10 when you asked those questions with people involved
11 in policy making, officers of the corporation --
12 title, by the way, does not necessarily make you an
13 officer as that term is used in the legal context.

14 But, in any event, I understood your
15 reason for asking those people. I thought in light
16 of the fact they were policy makers the question was
17 appropriate. I don't think so here and I think
18 employees of the company, that it's just not
19 pertinent. That's my position. It might turn out
20 to be wrong. That's my direction not to answer.

21 Q. Have you ever discussed the issue of
22 cigarette smoking and health with anyone at the
23 company?

24 A. No, I haven't.

25 Q. Any reason why you never discussed that?

1 A. No. No, just haven't.

2 Q. You're aware of statistics that suggest
3 350,000 Americans die every year smoking cigarette?

4 A. Not aware of that.

5 Q. Never read that anywhere?

6 A. No.

7 Q. Are you aware the Surgeon General
8 believes over 100,000 people die every year from
9 cigarette smoking?

10 A. I'm not aware of that statistic.

11 Q. If I were to tell you the Surgeon General
12 of the United States has concluded that over 300,000
13 Americans die every year from smoking cigarette,
14 would that change your smoking habits?

15 MR. SHAPIRO: Hypothetical.

16 MR. EDELL: It's not hypothetical.

17 That's what he says.

18 MR. SHAPIRO: What was the 100,000 that
19 you mentioned a minute ago?

20 MR. EDELL: I said over 300 people.

21 MR. SHAPIRO: The question before, didn't
22 it mention 100,000? Maybe the numbers are changed.
23 That's irrelevant. I'm not being cute with you. I
24 think that it's a hypothetical question. As
expressed last time, my objection is hypothetical

1 questions can involve a never-ending set of
2 contingencies and it's my position that we have
3 questions that are contingent and of an uncertain
4 nature. The answers aren't relevant, nor will they
5 lead to discovery of admissible evidence and,
6 therefore, I make my direction not to answer.

7 Q. Sir, when you came with the company in
8 1970 did you do anything to determine whether or not
9 cigarette smoking in fact did cause cancer, lung
10 cancer?

11 A. No, I did not.

12 Q. You haven't done anything through the
13 present in that regard. Is that correct?

14 A. No, I have not.

15 Q. And no one at Lorillard has ever given
16 you any information concerning cigarette smoking and
17 health. Is that correct?

18 A. That's correct.

19 Q. You haven't independently sought out
20 information from other sources, is that right,
21 regarding cigarette smoking and lung cancer?

22 A. I'm sorry. Would you repeat that question?

23 Q. Have you ever attempted through any
24 source to gather information or to learn about
25 whether or not in fact cigarette smoking causes lung

1 cancer?

2 A. No, sir.

3 Q. You're in charge of the marketing of
4 which cigarettes now?

5 A. Overall responsibility for all the cigarettes.

6 Q. That are sold by Lorillard?

7 A. Yes, sir.

8 Q. Approximately how much in terms of the
9 percentage of the market, the overall cigarette
10 market, does Lorillard have?

11 MR. NORTHRIP: What time period?

12 MR. EDELL: 1982.

13 A. About eight-and-a-half percent.

14 Q. Eight-and-a-half percent of how many
15 million people?

16 A. Million people of what?

17 Q. How many smokers in 1982?

18 A. I don't know the exact number. I'm sorry, I
19 can't recall that.

20 Q. More than 50 million. Right?

21 A. I don't recall the number. I don't recall the
22 number.

23 Q. At least five million people were smoking
24 Lorillard cigarettes back in 1982. Right? You have
25 no idea?

1 A. I have no idea, no, sir.

2 Q. You have any children?

3 A. Yes.

4 Q. They smoke?

5 A. No, they do not.

6 Q. Ever discuss cigarette smoking and health
7 with them?

8 A. No.

9 Q. Your wife?

10 A. My wife smokes.

11 Q. She ever discuss it with the children?

12 A. Not to my knowledge.

13 Q. You mean you've never given them any
14 information whatsoever concerning cigarette smoke
15 and health?

16 A. That's right.

17 Q. Never discussed it with them?

18 A. No.

19 Q. Why?

20 A. Never occurred.

21 Q. Discuss their education?

22 A. Yes, sir.

23 Q. Discuss what they're going to do for the
24 summer?

25 A. Yes, sir.

1 Q. Discuss where they're going to go for
2 vacation?

3 A. Yes.

4 Q. But you don't discuss whether cigarette
5 smoking causes lung cancer or not? Never discussed
6 that with them?

7 MR. SHAPIRO: His children.

8 MR. EDELL: Yes.

9 Q. Is that right?

10 A. No, I have not.

11 Q. They ever try cigarette smoking?

12 A. Not to my knowledge.

13 Q. How old are your children?

14 A. One is 15 and one is eight.

15 Q. Your 15 year old, is it a she or a he?

16 A. She.

17 Q. What's the name?

18 A. Kirsten.

19 Q. Ever come home and tell you she learned
20 something in school concerning cigarette smoking and
21 health?

22 A. They had some course generally on the topic,
23 yes. Doesn't discuss it.

24 Q. She tell you she took that course?

25 A. It wasn't a course. It was an hour of general

1 topic from what I understand.

2 Q. She come home and say, "Dad, they told me
3 in school today cigarette smoking causes lung
4 cancer"?

5 A. No, sir.

6 MR. SHAPIRO: Always good to have a
7 lawyer handy to give him a chance to formulate an
8 objection if you wait for him to do that instead of
9 shooting back.

10 I don't know if that's the end of the
11 line of questioning. I hope it is. It has nothing
12 to do with this case and totally irrelevant and is
13 not going to lead to anything. If it's not the end
14 of the line of questioning, I suggest it will be.

15 MR. EDELL: May be the line of answers,
16 not the line of questions.

17 Q. Ever discuss what you do for a living
18 with your daughter?

19 MR. SHAPIRO: I object. Tell me how
20 that's relevant. I think you're --

21 MR. EDELL: Make your direction.

22 MR. SHAPIRO: -- just harassing.

23 MR. EDELL: Make your direction.

24 MR. SHAPIRO: He's got my direction. The
25 direction is not to answer. You're getting a little

1 cute and harassing here.

2 MR. EDELL: I don't know whether it's
3 cute or harassing.

4 MR. SHAPIRO: I think it is. I shouldn't
5 say cute or, but harassing.

6 Q. Do you know anybody that's stopped
7 smoking other than yourself?

8 A. My brother stopped smoking.

9 Q. Do you know anybody that's ever tried to
10 stop smoking that couldn't, at least said they
11 couldn't?

12 A. Couldn't recall anybody.

13 Q. Never met anybody that said, "I wished I
14 could stop smoking, but I can't"?

15 A. Can't recall a name, no, sir.

16 Q. You don't have to give me their name.

17 A. I can't recall.

18 Q. Can't recall an incident where that
19 occurred?

20 A. Can't recall.

21 Q. No further questions.

22 MR. SHAPIRO: Thank you. We're done.

23 (Deposition adjourned.)

1 C E R T I F I C A T E

2
3 I, THOMAS L. LA FERA, a Certified Shorthand
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify that prior to the
6 commencement of the examination the witness and/or
7 witnesses were sworn by me to testify the truth, the
8 whole truth and nothing but the truth.

9 I do further certify that the foregoing is a
10 true and accurate computer-aided transcript of the
11 testimony as taken stenographically by and before me
12 at the time, place and on the date hereinbefore set
13 forth.

14 I do further certify that I am neither of
15 counsel nor attorney for any party in this action
16 and that I am not interested in the event nor
17 outcome of this litigation.

18
19 
20 _____
21 Notary Public of the State of New Jersey
22 Certificate Number 1104

22 My commission expires August 4, 1988.

23
24 Dated: _____